

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE

FREDRIC RELLER,)
)
) PLAINIFF,)
)
) VS.) SUPERIOR COURT
) CASE NO. BC 261796
PHILIP MORRIS, INCORPORATED,)
A CORPORATION, ET AL.,)
)
) DEFENDANTS.)
)

REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
TUESDAY, JUNE 17, 2003
AFTER RECESS A.M. AND P.M. SESSION
PAGES 5920 THROUGH 6080, INCLUSIVE

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1 CASE NUMBER: BC 261796
2 CASE NAME: RELLER V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA TUESDAY, JUNE 17, 2003
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: LINDA BICHE, CSR NO. 3359, RMR, CRR
7 TIME: 10:15 A.M.

8
9 - - O - -

10
11 (RECESS; DR. BURNS IS ON THE STAND.)
12

13 THE COURT: THE CLOCK IS TICKING.

14 MS. WILKINSON.

15 MS. WILKINSON: THANK YOU, YOUR HONOR.

16 Q. DR. BURNS, BEFORE WE BROKE WE HAD AN
17 INTELLECTUAL CONVERSATION ABOUT PEOPLE MAGAZINE, RIGHT?

18 A. IF YOU WILL SAY SO, YES.

19 THE COURT: I THINK HE'LL AGREE AT LEAST IT WAS A
20 CONVERSATION ABOUT PEOPLE'S MAGAZINE.

21 Q. BY MS. WILKINSON: TRULY JUST ABOUT THIS
22 ADVERTISEMENT?

23 A. THAT'S CORRECT.

24 Q. ABOUT THIS REYNOLDS PRODUCT CLAIMING THAT IT'S
25 ADDITIVE FREE?

26 A. THAT'S CORRECT.

27 Q. I WANTED TO MAKE SURE I UNDERSTOOD WHAT YOU
28 WERE TRYING TO TELL ME.

1 YOU SAID THERE WERE TWO PARTS OF THAT. ONE IS
2 YOU'RE NOT SURE WHETHER IT'S TRULY ADDITIVE FREE?

3 A. IT'S MY UNDERSTANDING THAT IT IS NOT ADDITIVE F
4 FREE AS WE USE THAT TERM SCIENTIFICALLY.

5 Q. WHAT DO YOU MEAN SCIENTIFICALLY WHEN YOU SAY
6 ADDITIVE FREE?

7 A. SUBSTANCES OTHER THAN THE TOBACCO LEAF.

8 Q. OKAY. AND YOU CAN GET, THOUGH, ADDITIVES USE
9 THROUGH -- YOUR SCIENTIFIC TERM, BY THE WAY, THAT THE TOBACCO
10 IS GROWN, IT'S FERTILIZED RIGHT?

11 A. NO. I'M REFERRING TO THINGS THAT ARE USED TO
12 TREAT THE TOBACCO AS IT'S CURED, TO MAINTAIN ITS HUMIDITY, TO
13 HOLD THE CIGARETTE TOGETHER, TO MAKE THE PAPER BURN, AND IN
14 AN APPROPRIATE FASHION, ALL OF THOSE KINDS OF SUBSTANCES THAT
15 ARE PART OF THE MANUFACTURE OF A CIGARETTE ARE, MY
16 UNDERSTANDING, CALLED ADDITIVES.

17 Q. SO LET'S, THEN, BREAK IT DOWN IN TWO
18 CATEGORIES. ADDITIVE FREE AS ADVERTISED ISN'T SAFE?

19 A. THAT'S CORRECT.

20 Q. AND ADDITIVE FREE, EVEN IN THE SCIENTIFIC TERM,
21 ISN'T SAFE BECAUSE EVEN IF YOU TAKE TOBACCO AND YOU ROLL IT
22 UP, YOU HAVE IT IN YOUR BACKYARD, YOU DRY IT OUT, YOU DRY IT
23 UP AND SMOKE IT, YOU'RE STILL GOING TO FACE THE RISK OF
24 GETTING DISEASE?

25 A. I'M NOT SURE I UNDERSTOOD YOUR QUESTION. BUT
26 IF YOU TAKE TOBACCO THAT YOU HAVE GROWN YOURSELF AND USED
27 NOTHING ELSE BUT THAT TOBACCO, IT STILL WILL HAVE TOXIC AND
28 CANCER-CAUSING SUBSTANCES, YES.

1 Q. SO EVEN IF WE USE YOUR SCIENTIFIC DEFINITION OF
2 ADDITIVE FREE, RIGHT, WHICH IS NO -- NO ADDITIVES AT ALL,
3 EVEN IN THE CURING PROCESS OR ANYTHING, THAT, IF IT MEETS
4 YOUR DEFINITION, WOULD STILL BE UNSAFE?

5 A. THAT'S CORRECT.

6 Q. OVER THE YEARS, THE TOBACCO COMPANIES HAVE
7 TRIED TO REDUCE THE DELIVERY OF TAR AND NICOTINE IN CERTAIN
8 CIGARETTES, RIGHT?

9 A. THE MACHINE MEASURED DELIVERY, YES.

10 Q. THE FTC, THE FEDERAL TRADE COMMISSION, HAS
11 ISSUED A STANDARD BY WHICH TOBACCO COMPANIES HAVE TO MEASURE
12 THE DELIVERY OF TAR AND NICOTINE FROM A PARTICULAR CIGARETTE?

13 A. THEY HAVE ISSUED A PROTOCOL FOR MAKING
14 MEASUREMENTS OF MACHINE MEASURED TAR AND NICOTINE, YES.

15 Q. OKAY. THAT'S THE FTC. AND THOSE MACHINE
16 MEASUREMENTS ARE THE ONLY ONES TOBACCO COMPANIES ARE ALLOWED
17 TO USE TO ADVERTISE OR TO PUBLICIZE THE TAR AND NICOTINE
18 DELIVERIES OF THE CIGARETTE?

19 A. THAT'S CORRECT.

20 Q. ALL RIGHT. THAT ONLY MEASURES -- THE FTC
21 METHOD ONLY MEASURES HOW A MACHINE SMOKES A CIGARETTE, NOT
22 HOW A HUMAN BEING, A PARTICULAR HUMAN BEING, MIGHT MEASURE?

23 A. THAT'S CORRECT.

24 Q. EXCUSE ME. MIGHT SMOKE.

25 BUT IS THE COMPARISON METHOD USED MANDATED BY
26 THE GOVERNMENT?

27 A. THAT'S CORRECT.

1 LET'S JUST ASSUME WE'RE ONLY TALKING ABOUT THE FTC METHOD.

2 THE TOBACCO COMPANIES OVER THE YEARS HAVE TRIED
3 TO REDUCE THE DELIVERY OF TAR AND NICOTINE ACCORDING TO OR AS
4 MEASURED BY THE FTC METHOD OVER THE LAST 40 YEARS, RIGHT?

5 A. THEY HAVE NOT ONLY TRIED, THEY HAVE SUCCEEDED.
6 THERE'S BEEN A 60 PERCENT REDUCTION IN TAR VALUES AND
7 NICOTINE VALUES.

8 Q. AND SOME OF THEIR PRODUCTS REDUCE TAR AND
9 NICOTINE DELIVERY PURSUANT TO THE FTC METHOD BY A GREATER
10 AMOUNT THAN OTHERS, RIGHT?

11 A. THE MEASUREMENT YIELDS DIFFERENT VALUES FOR
12 DIFFERENT CIGARETTES BY A WIDE MARGIN, YES.

13 Q. SINCE YOU'RE FAMILIAR WITH THE HISTORY OF SOME
14 TOBACCO COMPANIES, ARE YOU FAMILIAR WITH A PRODUCT THAT WAS
15 SOLD BY PHILIP MORRIS IN 1980 CALLED THE CAMBRIDGE CIGARETTE?

16 A. I'M GENERALLY FAMILIAR WITH IT, YES.

17 Q. OKAY. AND BACK THEN -- NOW, WE'RE JUST TALKING
18 ABOUT IN AND AROUND 1980 -- THIS WAS THE PACKAGE OF THE
19 CIGARETTE, WASN'T IT?

20 A. I CAN'T SAY -- CAN'T TELL YOU WHAT THE
21 PACKAGING LOOKED LIKE IN 1980. I'M SORRY.

22 THE COURT: DO YOU WANT TO MARK THAT AS NEXT IN
23 ORDER, WHICH IS GOING TO BE 25?

24 MS. WILKINSON: I WOULD, YOUR HONOR. THANK YOU.

25 THE COURT: 25 IS THE PHOTO OF THE CAMBRIDGE
26 CIGARETTE PACKAGE.

27
28 (EVID. - 25, CAMBRIDGE CIGARETTE PHOTO)
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5924

1 THE COURT: DO YOU HAVE ANOTHER NUMBER FOR IT OR
2 PREVIOUSLY --

3 MS. WILKINSON: NO, YOUR HONOR. THAT 25 WILL BE
4 SUFFICIENT.

5 THE COURT: THANK YOU.

6 Q. BY MS. WILKINSON: AND THIS CAMBRIDGE CIGARETTE
7 WAS MEASURED AS SHOWN HERE ON THE BOX AS LESS THAN .1
8 MILLIGRAMS OF TAR, CORRECT?

9 A. THAT'S CORRECT.

10 Q. THAT'S A VERY LOW YIELD BY THE FTC METHOD OF
11 TAR?

12 A. AS I UNDERSTAND IT, IT IS BELOW THE ABILITY OF
13 THE FTC METHOD TO MEASURE, AS A MATTER OF FACT, YES.

14 Q. SO THAT'S PRETTY LOW?

15 A. IT'S VERY LOW.

16 Q. THE AVERAGE WINSTON CIGARETTE, DO YOU KNOW WHAT
17 THE YIELD OF TAR IS ON A WINSTON CIGARETTE?

18 A. THERE ARE MULTIPLE DIFFERENT FORMS OF WINSTON
19 CIGARETTES FROM 12 OR 14 MILLIGRAMS TAR ON DOWN.

20 Q. OKAY. SO IF WE'RE COMPARING THOSE, THE
21 WINSTON, YOU SAID WAS 12 TO 14 --

22 A. I AM JUST --

23 Q. -- APPROXIMATELY?

24 A. -- APPROXIMATING. SOMEWHERE AROUND 12, I
25 THINK.

26 Q. AND IS IT MILLIGRAMS?

27 A. MILLIGRAMS.

28 Q. OF TAR?

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5925

1 A. UH-HUH.

2 Q. AND THIS CAMBRIDGE, MANUFACTURED BY
3 PHILIP MORRIS, BACK IN 1980, MEASURED LESS THAN .1,
4 MILLIGRAMS?

5 A. THAT'S CORRECT. BY MACHINE.
6 Q. THAT'S WHAT WE SAID. ALL WE'RE TALKING ABOUT
7 IS ABOUT MACHINE, RIGHT?
8 A. OKAY.
9 Q. NOW, PART OF THE REASON THAT THE CAMBRIDGE
10 CIGARETTE MEASURED SO LOW IS IT HAD A VERY EXTENSIVE FILTER
11 ON IT, RIGHT?
12 A. PARTLY.
13 Q. OKAY. SO PART OF THE REASON YOU DIDN'T -- WHEN
14 YOU PUFF IN ON THE CIGARETTE, YOU DIDN'T GET A LOT OF THE TAR
15 AND NICOTINE WAS BECAUSE IT WAS FILTERED OUT?
16 A. I THINK THAT IS NOT CORRECT.
17 Q. OKAY. WELL, THERE WERE LITTLE VENTILATION
18 HOLES IN THE FILTER, RIGHT?
19 A. THAT'S CORRECT.
20 Q. I'M DRAWING THEM BIG, BUT THEY'RE TINY LITTLE
21 MACHINE-MADE HOLES, RIGHT?
22 A. IT DEPENDS ON THE CIGARETTE. SOME OF THEM ARE
23 QUITE REASONABLY SIZED.
24 Q. WELL, YOU KNOW DR. FERRONE, DON'T YOU?
25 A. I DO.
26 Q. HE USED TO WORK FOR PHILIP MORRIS?
27 A. HE DID.
28 Q. WHEN HE WAS AT PHILIP MORRIS, HE WORKED ON A
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1 PROJECT TO CREATE THESE HOLES USING A LASER, RIGHT?
2 A. I DON'T KNOW SPECIFICALLY WHAT HE DEALS WITH
3 HIS WORK AT PHILIP MORRIS.
4 Q. BUT YOU KNOW THAT PHILIP MORRIS HAS A WAY OF
5 MAKING THESE HOLES VERY SMALL USING THE LASER TECHNOLOGY,
6 RIGHT?
7 A. THAT IS ONE OF THE MAJOR WAYS THAT HOLES ARE
8 PLACED IN FILTERS FOR MOST MANUFACTURERS, YES.
9 Q. AND THAT'S CALLED VENTILATION, RIGHT?
10 A. IT'S CALLED VENTILATION.
11 Q. AND WHAT THESE LITTLE HOLES --
12 A. OR DILUTION.
13 Q. OR DILUTION. OKAY.
14 AND WHAT VENTILATION OR DILUTION ALLOWS IS WHEN
15 THE SMOKE IS COMING DOWN THE ROD OF THE CIGARETTE, INSTEAD OF
16 ALL OF IT GOING IN THE SMOKER'S MOUTH, SOME OF IT COMES OUT
17 THESE LITTLE HOLES AND COMES OUT THE SIDE, RIGHT?
18 A. NO.
19 Q. NO?
20 A. THAT'S NOT THE WAY IT WORKS.
21 Q. HOW DOES IT WORK?
22 YOU TELL US.
23 A. THE PRINCIPAL WAY THAT VENTILATION HOLES AND
24 FILTERS WORK IS WHEN YOU PUT IT INTO THE MACHINE IS THE
25 MACHINE DRAWS A VERY SLOW SMALL PUFF, AND IT CONTINUES TO DO
26 THAT UNTIL THE CIGARETTE SMOKES ALL THE WAY DOWN TO THE END.
27 OKAY. IF YOU POKE HOLES IN THE FILTER, YOU PUT
28 IT INTO THE MACHINE, SO IT DOESN'T BLOCK THE HOLES, THEN THE
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5927
1 MACHINE SUCKS IN AIR THROUGH THE HOLES. AND BECAUSE YOU
2 DON'T SUCK IN SMOKE, YOU GET A LOWER NUMBER WHEN YOU MEASURE
3 IT ON THE MACHINE.
4 SO THE HOLES ALLOW THE MACHINE TO NOT GET AS
5 MUCH SMOKE COMING THROUGH THE CIGARETTE. SO IT'S SORT OF AN
6 ARTIFICIAL REDUCTION IN THE AMOUNT OF TAR AND NICOTINE
7 DELIVERED TO THE MEASUREMENT TECHNIQUE.

8 Q. OKAY. AND ALL OF THE TAR AND NICOTINE THAT'S
9 POSSIBLY ACCESSIBLE TO THE MACHINE HERE IN THE TOBACCO LEAF
10 DOES NOT GET PASSED THE FILTER INTO EITHER THE SMOKER'S MOUTH
11 OR INTO THE MACHINE MEASUREMENT, CORRECT?
12 A. WELL, YOU'RE SAYING SEVERAL THINGS THAT ARE
13 INACCURATE.
14 Q. OKAY. GO AHEAD.
15 A. I MEAN, I CAN TRY AND FIX THEM.
16 NUMBER ONE, TAR AND NICOTINE -- NICOTINE IS IN
17 THE BACK, BUT THE TAR IS A COMBUSTION PRODUCT SO IT'S NOT --
18 Q. IT'S IN THE SMOKE, RIGHT?
19 A. IT'S IN THE SMOKE. IT'S NOT IN THE TOBACCO
20 ITSELF.
21 OKAY. THE SECONDLY, THERE IS A MARKED
22 DIFFERENCE IN DESCRIBING WHAT HAPPENS IF YOU DESCRIBE IT FOR
23 THE MACHINE MEASUREMENT OR YOU DESCRIBE IT AS THE PERSON
24 USING IT.
25 Q. OKAY.
26 A. SO THE PERSON USING IT IS GOING TO SMOKE THAT
27 CIGARETTE VERY DIFFERENTLY THAN THE MACHINE WILL BECAUSE OF
28 THESE VENTILATION HOLES AND THESE CHARACTERISTICS OF THE
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5928
1 CIGARETTE THAT ARE DESIGNED TO MAKE IT YIELD A VERY LOW VALUE
2 FOR THE MACHINE.
3 Q. AND THAT'S EXACTLY WHERE I WAS GOING,
4 DR. BURNS. JUST BECAUSE YOU HAVE THIS FILTER ON IN THE
5 CAMBRIDGE CIGARETTE THAT LOWERS THE MEASUREMENT FROM THE FTC
6 METHOD, DOESN'T MAKE THIS CIGARETTE SAFER, DOES IT?
7 A. IF THE PRODUCT ACTUALLY DELIVERS LESS TAR AND
8 NICOTINE TO THE PERSON USING IT, THAT WOULD REDUCE ITS
9 TOXICITY. THERE ARE TECHNIQUES THAT HAVE BEEN DEVELOPED THAT
10 ARE INTENDED TO DO THAT.
11 IF THE PRODUCT, HOWEVER, SIMPLY REDUCES THE
12 MEASUREMENT BY THE MACHINE, BUT ALLOWS THE PERSON USING THE
13 PRODUCT TO GET A FULL DOSE OF TAR AND NICOTINE, THEN THERE IS
14 NO REDUCTION IN RISK BECAUSE THERE'S NO REDUCTION IN EXPOSURE
15 TO TAR AND NICOTINE.
16 Q. OKAY. SO IF SOMEONE WAS SMOKING A CAMBRIDGE
17 CIGARETTE THAT WE'RE TALKING ABOUT HERE, A HUMAN NOW, NOT THE
18 MACHINE, AND THEY SUCKED IN MORE DEEPLY AND BROUGHT IN MORE
19 OF THAT SMOKE, THAT'S NOT GOING TO REDUCE THEIR RISK,
20 CORRECT?
21 A. I AM NOT CERTAIN WHICH TYPE OF CAMBRIDGE
22 CIGARETTES YOU'RE REFERRING TO.
23 Q. THE ONE RIGHT UP THERE WITH THE .1 MILLIGRAM OF
24 TAR AS MEASURED BY THE FTC METHOD?
25 A. I AM STILL NOT CERTAIN WHAT THE SPECIFIC
26 CHARACTERISTICS OF THAT FILTER ARE.
27 THERE IS THE POTENTIAL TO SELECTIVELY REMOVE BY
28 FILTRATION -- THE POSSIBILITY TO SELECTIVELY REMOVE BY
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5929
1 FILTRATION SOME OF THE TOXIC COMPONENTS IN SMOKE.
2 Q. OKAY.
3 A. THAT OFFERS A PROMISE OF REDUCED TOXICITY THAT
4 WOULD NEED TO BE CONFIRMED BY ACTUAL MEASUREMENTS, IN PEOPLE,
5 IN ANIMALS, AND VARIOUS OTHER STUDIES.
6 SO THAT POTENTIAL TO SELECTIVELY REMOVE THEM IS
7 THERE.
8 Q. OKAY.
9 A. TO THE EXTENT THAT WHAT THE FILTER IS DOING IS
10 SIMPLY VARYING THE SIZE OF THE HOLE SO THAT YOU GET A LOW

11 AMOUNT OF SMOKE COMING TO THE MACHINE, AND A FULL AMOUNT OF
12 SMOKE COMING TO THE PERSON, THEN YOU WOULD NOT EXPECT ANY
13 REDUCTION IN THE RISK.

14 Q. WELL, LET'S BREAK IT DOWN. YOU SAID IT HAS THE
15 POTENTIAL OF REDUCING THE HARM, RIGHT?

16 A. THAT'S CORRECT.

17 Q. BUT THERE'S NO WAY, RIGHT -- OR THERE WAS NO
18 WAY IN 1980 TO DETERMINE WHETHER IT WAS ACTUALLY REDUCING THE
19 HARM BECAUSE SOME OF THE METHODS YOU'RE TALKING ABOUT HAVE
20 JUST RECENTLY BEEN DEVELOPED ABOUT HOW YOU MEASURE THE
21 BY-PRODUCTS THAT ONE HAD IN THEIR BODY FROM SMOKING, RIGHT?

22 A. NO. YOU'RE CONFUSING TWO ISSUES.
23 YES, SCIENCE MOVES ON. WE HAVE BETTER
24 TECHNOLOGY ALL THE TIME.

25 IN 1980, THERE WAS EXISTING TECHNOLOGY
26 THAT COULD HAVE BEEN APPLIED, BOTH IN ANIMAL AND IN HUMAN
27 DATA, THAT WOULD ALLOW AN ASSESSMENT OF WHETHER OR NOT THE
28 PRODUCT AS BEING OFFERED TO THE CONSUMER WAS, INDEED,
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1 ALTERING THE EXPOSURE OF THAT INDIVIDUAL AND SUBSEQUENTLY
2 ALTERING THE DISEASE RISK.

3 Q. WELL, LET'S TALK ABOUT THAT.
4 YOU FIRST TALKED ABOUT REDUCED EXPOSURE, RIGHT?
5 THAT MEANS, ARE YOU GETTING LESS OF THE HARM OF
6 FULL CONSTITUENTS?

7 A. THAT'S RIGHT.

8 Q. AND THE SURGEON GENERAL OF THE UNITED STATES
9 AND THE PUBLIC HEALTH COMMUNITY HAS NEVER SET FORTH A
10 METHODOLOGY FOR SAYING HOW YOU REDUCE THE EXPOSURE IN
11 CIGARETTE SMOKE, RIGHT?

12 A. I'M NOT SURE WHAT YOU MEAN BY THAT.

13 Q. WELL, THERE'S NO STANDARD I CAN GO LOOK AT IN A
14 BOOK THAT SAYS, HERE'S HOW YOU REDUCE THE EXPOSURE OF HARMFUL
15 CONSTITUENTS IN CIGARETTE SMOKE?

16 A. THAT'S NOT QUITE TRUE. THERE ARE IN MANY
17 SURGEON GENERAL'S REPORTS AND ELSEWHERE DESCRIPTIONS OF HOW
18 YOU MEASURE THE EXPOSURE OF INDIVIDUALS TO CIGARETTE SMOKE.

19 Q. YOU'RE TALKING ABOUT MEASUREMENT, DR. BURNS.
20 LET'S STICK WITH MY QUESTIONS.
21 I SAID, IS THERE A STANDARD THAT WILL TELL ME
22 HOW TO REDUCE THE EXPOSURE?

23 A. WITHOUT A MEASUREMENT?

24 Q. YES. LIKE I SAY, YOU DO THIS AND YOU WILL
25 REDUCE THE EXPOSURE OF ALL THE HARMFUL CONSTITUENTS AND MAKE
26 THAT CIGARETTE SAFER?

27 A. YOU MEAN SOME VALIDATED MANUFACTURING CHANGES?
28 Q. YES.
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1 A. NO, THAT HASN'T HAPPENED.

2 Q. ALL RIGHT. AND EVEN IF YOU REDUCE THE EXPOSURE
3 TO SOME OF THESE CHEMICALS, THAT DOESN'T MEAN YOU'VE REDUCED
4 THE HARM OF THE CIGARETTE, RIGHT?

5 A. NO. YOU WOULD NEED TO THEN FOLLOW-UP WITH
6 OTHER TESTING TO ASSESS WHETHER THERE HAS BEEN A REDUCTION IN
7 HARM FROM THAT REDUCED EXPOSURE. THE PRESUMPTION WOULD BE
8 THERE, BUT YOU WOULD NEED TO FOLLOW THAT UP WITH ACTUAL
9 OBSERVATION.

10 Q. AND THE PUBLIC HEALTH COMMUNITY AND THE SURGEON
11 GENERAL HAS NEVER SAID A PARTICULAR TECHNOLOGY OR CIGARETTE
12 ACTUALLY REDUCES THE HARM TO SMOKERS?

13 A. WELL, I'M EMBARRASSED TO SAY THAT,

14 UNFORTUNATELY, WE PROBABLY DID. WE DIDN'T SAY IT
15 DEFINITELY, BUT WE CERTAINLY SAID IT IN A WAY THAT PEOPLE
16 WOULD UNDERSTAND THAT TO BE A RECOMMENDATION. WE SAID THAT,
17 IN 1981, THAT CIGARETTES WITH LOWER TAR AND
18 NICOTINE -- PEOPLE WHO COULD NOT QUIT WOULD BE ADVISED TO
19 SWITCH TO THOSE PRODUCTS BECAUSE IT IS LIKELY THAT THEY MIGHT
20 HAVE A LOWER RISK OF LUNG CANCER.

21 Q. BUT TODAY --

22 A. THAT TURNS OUT NOT TO BE TRUE. AND WE WERE IN
23 ERROR BECAUSE WE DID NOT HAVE INFORMATION AT THAT TIME THAT
24 WAS AVAILABLE ON THE CHARACTERISTICS OF THE CIGARETTE.

25 MS. WILKINSON: JUDGE, I'M GOING MOVE TO --

26 THE COURT: HE'S ANSWERING YOUR QUESTION,
27 MS. WILKINSON. THE PROBLEM IS THAT YOU JUST -- BUT THIS IS
28 TRUE FOR BOTH OF YOU -- YOU DON'T ALWAYS LIKE THE ANSWERS,
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1 BUT HE'S ANSWERING YOUR QUESTION.

2 Q. BY MS. WILKINSON: DR. BURNS, TODAY, THERE'S NO
3 WAY OF SAYING A PARTICULAR CIGARETTE OR TECHNOLOGY ACTUALLY
4 REDUCES THE HARM TO A SMOKER?

5 A. THERE IS NO MANUFACTURING TECHNIQUE THAT HAS
6 BEEN APPROVED AS DOING THAT, THAT'S CORRECT.

7 Q. OKAY. BECAUSE THERE'S NO WAY TO TELL SOMEONE
8 THERE'S A SAFE CIGARETTE OR A SAFER CIGARETTE, YOU AND OTHER
9 MEMBERS OF THE COMMITTEES -- YOU'VE WRITTEN THE SURGEON
10 GENERAL'S REPORT -- HAVE ALWAYS RECOMMENDED THAT SMOKERS
11 QUIT?

12 A. WELL, I THOUGHT I JUST TOLD YOU --

13 THE COURT: THAT'S A YES OR NO.

14 THE WITNESS: WE HAVE ALWAYS RECOMMENDED THAT PEOPLE
15 QUIT, NOT IN THE CONTEXT THAT THAT QUESTION WAS ASKED. BUT,
16 YOU KNOW, CERTAINLY, WE HAVE ALWAYS RECOMMENDED THAT PEOPLE
17 QUIT, THAT'S CORRECT.

18 Q. BY MS. WILKINSON: FIRST AND FOREMOST, IF
19 PEOPLE SMOKE, YOU WANT THEM TO STOP?

20 A. ABSOLUTELY.

21 Q. NO DOUBT ABOUT THAT. IN FACT, YOU WOULDN'T SAY
22 TO SOMEONE, SWITCH, IF THEY SMOKED AN UNFILTERED CIGARETTE,
23 SWITCH TO A FILTERED CIGARETTE, RIGHT?

24 A. NO, I WOULD NOT.

25 Q. YOU'D SAY, STOP SMOKING?

26 A. THAT'S CORRECT.

27 Q. SO IN 1964 WHEN THE SURGEON GENERAL CAME OUT
28 AND SAID, SMOKING CAUSES LUNG CANCER, THE MEDICAL AND
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1 SCIENTIFIC COMMUNITY BELIEVED THE ONLY WAY TO AVOID THAT LUNG
2 CANCER WAS TO QUIT?

3 A. THAT'S -- WELL, QUIT AND NOT START, YES.

4 Q. THANK YOU. QUIT, AND FOR THOSE THAT HADN'T
5 STARTED, DON'T EVER GET STARTED?

6 A. THAT'S CORRECT.

7 Q. AFTER THAT 1964 REPORT, THE MEDICAL COMMUNITY,
8 THE SCIENTIFIC COMMUNITY, GOVERNMENT, VOLUNTARILY
9 ORGANIZATIONS ALL WORKED TO EDUCATE THE PUBLIC ABOUT THE
10 DANGERS OF SMOKING?

11 A. THAT'S CORRECT.

12 Q. AND FIRST AND FOREMOST, THEIR MESSAGE WAS, YOU
13 SHOULDN'T START SMOKING, AND IF YOU DO SMOKE, YOU SHOULD
14 QUIT?

15 A. THAT'S CORRECT.

16 Q. IN 1989, THE SURGEON GENERAL WAS

17 C. EVERETT KOOP?
18 A. THAT'S CORRECT.
19 Q. AND YOU ASSISTED THE SURGEON GENERAL IN WRITING
20 A REPORT LOOKING BACK ON THE SUCCESS OF THIS PUBLIC HEALTH
21 CAMPAIGN TO EDUCATE AMERICANS, RIGHT?
22 A. YES, I WAS A REVIEWER FOR THAT REPORT.
23 Q. AND HE DECLARED IN THAT REPORT,
24 C. EVERETT KOOP, THAT THAT PUBLIC HEALTH CAMPAIGN WAS A GREAT
25 SUCCESS, DIDN'T HE?
26 A. HE DID.
27 Q. IN FACT, HE USED THAT PHRASE -- I'M NOT EVEN
28 SURE I UNDERSTAND EXACTLY WHAT IT MEANS -- ABOUT "THE ASHTRAY
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5934

1 IS FOLLOWING THE SPITTOON INTO OBLIVION," RIGHT?
2 A. YES, HE DID SAY THAT.
3 Q. MEANING, PEOPLE ARE QUITTING MORE AND MORE AND
4 FEWER PEOPLE ARE SMOKING?
5 A. THAT'S CORRECT.
6 Q. AND THE SURGEON GENERAL SAID THAT THE PEOPLE
7 WHO ARE INVOLVED WITH THAT PUBLIC HEALTH CAMPAIGN SHOULD TAKE
8 GREAT PRIDE IN THE SUCCESS THAT THEY HAD ACHIEVED AS OF 1989?
9 A. HE DID.
10 Q. YOU'RE PROUD OF THAT WORK, AREN'T YOU?
11 A. I CERTAINLY AM.
12 Q. AND BASED IN PART ON THAT WORK, CIGARETTE
13 CONSUMPTION IN THIS COUNTRY HAS BEEN DECLINING EVER SINCE
14 THEN, OTHER THAN A FEW LITTLE BLIPS, BUT GENERALLY, IT'S BEEN
15 DECLINING?
16 A. SINCE?
17 Q. 1964.
18 A. IT IS LOWER NOW THAN IT WAS THEN, AND MOST
19 YEARS, IT HAS DECLINED.
20 Q. WELL, YOU SHOWED THE JURY A CHART ABOUT
21 CIGARETTE CONSUMPTION, DIDN'T YOU?
22 A. I DID.
23 Q. THAT WAS MARKED AS COURT'S EXHIBIT NO. 1.
24 THIS IS IT, RIGHT?
25 A. YES.
26 THE COURT: IT IS IN EVIDENCE. 1 IS IN EVIDENCE.
27 MS. WILKINSON: THANK YOU, YOUR HONOR.
28 Q. AND THIS SHOWS THAT AS OF THE SURGEON GENERAL'S
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5935

1 REPORT, RIGHT HERE IN ABOUT 1964 --
2 A. THE SURGEON GENERAL'S REPORT IS THAT PEAK, NOT
3 THE TROUGH.
4 Q. GOT IT. OTHER THAN A FEW LITTLE BLIPS RIGHT
5 HERE, GENERALLY, OVER THE YEARS, ESPECIALLY GOING TO 1990,
6 CIGARETTE CONSUMPTION HAS BEEN REDUCED DRAMATICALLY?
7 A. THAT'S CORRECT.
8 Q. NOW, YOU STOPPED THIS CHART IN 1990, DIDN'T
9 YOU?
10 A. NO.
11 Q. OH, WELL, THIS CHART STOPS IN 1990, DOES NOT
12 IT?
13 A. NO.
14 Q. ARE YOU SAYING THAT THIS SHOWS 2000?
15 A. I THINK IT GOES EITHER TO '99 OR 2000. I CAN
16 TELL BECAUSE OF THE STEEP DECLINE AT THE VERY END.
17 Q. OKAY. WELL, LET'S TALK ABOUT THAT.
18 TO MAKE THIS CLEAR, IF THIS IS UP TO 2000,
19 ACCORDING TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, THE

20 RATE OF CIGARETTE CONSUMPTION USING THIS CALCULUS YOU HAVE
21 HERE THAT IS PER CAPITA CONSUMPTION WAS DOWN TO 1,980
22 CIGARETTES PER CAPITA, RIGHT?
23 A. AS OF 2002, I BELIEVE.
24 Q. ARE YOU SURE?
25 LET ME READ YOU THE NUMBER AGAIN.
26 A. I DON'T HAVE THE NUMBERS COMMITTED TO MEMORY,
27 BUT MY RECALL IS THAT IT DIDN'T DROP DOWN TO 2000 -- DOWN
28 BELOW 2000 BEFORE THE YEAR 2000. BUT THE NUMBERS ARE THERE.
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5936

1 Q. LET ME SEE IF I CAN FIND SOMETHING TO
2 REFRESH --
3 A. I WOULD CAUTION YOU THAT THERE ARE OFTEN
4 SEVERAL SETS OF THOSE NUMBERS WITH DIFFERENT DENOMINATORS.
5 Q. OKAY. WELL, LET ME READ YOU TWO NUMBERS.
6 A. ENUMERATORS. EXCUSE ME.
7 Q. LET ME READ YOU SOMETHING AND SEE IF I CAN
8 REFRESH YOUR RECOLLECTION.
9 THE COURT: IT'S REAL IMPORTANT, DR. BURNS, THAT YOU
10 NOT WALK ON MS. WILKINSON'S OR MR. PIUZE' WORDS WHILE THEY'RE
11 ASKING YOU QUESTIONS, AND I CAUTION ALL ATTORNEYS NOT TO WALK
12 ON THE WORDS OF THE WITNESSES.

13 Q. BY MS. WILKINSON: DR. BURNS, I'M GOING TO SHOW
14 YOU THE U.S. DEPARTMENT OF AGRICULTURE REPORT.

15 A. UH-HUH.

16 Q. WHICH TALKS ABOUT PER CAPITA CONSUMPTION OF
17 TOBACCO PRODUCTS IN THE UNITED STATES FROM -- INCLUDING
18 OVERSEAS FORCES INTO 1992 TO 2002, OKAY?

19 THE COURT: DO YOU WANT THAT MARKED?

20 MS. WILKINSON: NO. JUST TO REFRESH HIS
21 RECOLLECTION, YOUR HONOR, AT THIS POINT. UNLESS HE
22 DISAGREES.

23 THE COURT: I'M SORRY, MS. WILKINSON. I DIDN'T GET
24 THE DATE ON THAT ONE.

25 MS. WILKINSON: THE DATE IS ON THE FRONT. THESE ARE
26 FOR STATISTICS FROM 1992 TO 2002.

27 THE COURT: THANK YOU.

28 Q. BY MS. WILKINSON: DR. BURNS, DOES THAT REFRESH
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5937

1 YOUR RECOLLECTION THAT IN 2000, THE RATE WAS 1980 AND THERE
2 ARE PRELIMINARY NUMBERS THERE FOR 2001 AND 2002?

3 A. NO. AS I CAUTIONED YOU, THERE ARE MULTIPLE
4 SETS OF NUMBERS.

5 THE COURT: THE ANSWER - DOES THAT REFRESH YOUR
6 MEMORY?

7 THE WITNESS: I'M SORRY. IT REFRESHES MY MEMORY.
8 YOU ARE INCORRECT IN THE STATEMENT THAT YOU'RE MAKING. I'D
9 BE HAPPY TO CORRECT THAT, IF YOU WOULD LIKE ME TO.

10 Q. BY MS. WILKINSON: OKAY. THAT WOULD BE GREAT.
11 IN 2002, THEN, YOU'RE SAYING THE RATE WENT
12 UNDER 2000, YES OR NO?

13 A. THE RATE REFLECTED ON THE CHART WENT UNDER
14 2,000 IN 2002.

15 Q. OKAY. SO IF WE LOOK AT THE RATE IN 1964 WHEN
16 THE SURGEON GENERAL'S REPORT WENT OUT, WHAT IS THE RATE OF
17 PER CAPITA CONSUMPTION OF CIGARETTES IN 1964?

18 A. MY RECALL IS THAT IT WAS ABOUT 4,300 SOMETHING.

19 Q. 4,300, APPROXIMATELY?

20 A. THAT WOULD DO, SURE.

21 Q. AND TODAY -- THAT WAS 1964.

22 IN 2002, WHICH WAS THE LAST AVAILABLE NUMBERS,

23 THE RATE IS WHAT?
24 A. THE RATE IS 1979.
25 Q. THAT IS A DRAMATIC DROP IN THE RATE OF
26 CONSUMPTION OF CIGARETTES IN THE UNITED STATES, CORRECT?
27 A. IT CERTAINLY IS.
28 Q. AND IN FACT, THIS IS BASED, IN PART, ON THE
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5938
1 FACT THAT OVER 50 MILLION AMERICANS HAVE STOPPED SMOKING,
2 RIGHT?
3 A. THAT'S CORRECT.
4 Q. THERE ARE MORE EX-SMOKERS THAN THERE ARE
5 SMOKERS TODAY IN THE UNITED STATES?
6 A. DEPENDS ON THE SURVEY, BUT THEY'RE ABOUT EVENLY
7 MATCHED AT THIS POINT, YES.
8 Q. ROUGHLY ALL OF THE LIVING SMOKERS WHO EVER
9 SMOKED HAVE STOPPED, CORRECT?
10 A. ROUGHLY HALF OF THEM HAVE STOPPED, YES.
11 Q. AND THAT MEANS ABOUT ONE AND A HALF TO TWO AND
12 A HALF MINIMUM PEOPLE EACH YEAR STOP SMOKING?
13 A. I THINK THAT'S ABOUT CORRECT, YES.
14 Q. THAT'S BASED --
15 A. I'M HAVING TROUBLE DOING THE MATH IN MY HEAD.
16 I'M SORRY.
17 Q. THAT'S BASED ON THE 2000 SURGEON GENERAL'S
18 REPORT.
19 A. YES.
20 Q. THE OVERWHELMING NUMBER OF THOSE PEOPLE WHO
21 QUIT EACH YEAR DO IT WITHOUT ANY PROFESSIONAL HELP, RIGHT?
22 A. THAT'S WHAT THEY REPORT, YES.
23 Q. NOW, BACK IN 1964, THESE NUMBERS THAT YOU GAVE
24 US REFLECT THAT ALMOST HALF OF THE ADULT POPULATION SMOKED,
25 RIGHT?
26 A. CERTAINLY FOR MALES, THAT WAS TRUE. SOMEWHAT
27 LESS FOR FEMALES.
28 Q. TODAY, THAT NUMBER'S BEEN CUT IN HALF IN ABOUT
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5939
1 25 PERCENT OF UNITED STATES CITIZENS OR PEOPLE IN THE UNITED
2 STATES WHO ARE ADULTS SMOKE?
3 A. THAT'S CORRECT.
4 Q. SO WE CUT THAT IN HALF?
5 A. APPROXIMATELY, YES.
6 Q. HERE IN CALIFORNIA, THOUGH, THE RATES ARE MUCH
7 LOWER, RIGHT?
8 A. THAT'S ALSO CORRECT.
9 Q. SO WE HAVE A RATE, ABOUT 2002 OF 25 PERCENT OF
10 ADULTS, BUT HERE IN CALIFORNIA, DEPENDING ON WHICH DATA SET
11 YOU LOOK AT, IT'S SOMEWHERE BETWEEN 14 AND 17 PERCENT, RIGHT?
12 A. 14 AND 18 PERCENT, YES.
13 Q. 14 AND 18. OKAY.
14 AND THAT IS THE LOWEST STATE IN AMERICA OTHER
15 THAN UTAH?
16 A. THAT IS CORRECT.
17 Q. THAT'S A PRETTY GOOD SUCCESS, ISN'T IT?
18 A. WE THINK SO, YES.
19 Q. BUT THE CAMPAIGN TO STOP PEOPLE FROM SMOKING
20 AND MAKE THEM QUIT HASN'T STOPPED HERE IN CALIFORNIA EVEN
21 WITH THESE RATES, RIGHT?
22 A. THAT IS ALSO CORRECT.
23 Q. YOU AND OTHERS ENCOURAGE THE PUBLIC TO STOP
24 SMOKING?
25 A. THAT'S CORRECT.

26 Q. AND THAT WAS TRUE EVEN BEFORE THE 1964 REPORT,
27 RIGHT?
28 A. THE PUBLIC HEALTH AUTHORITIES RECOMMENDED
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5940
1 CESSATION AT THAT TIME, YES.
2 Q. SO PEOPLE BEFORE 1964 WERE ADVISED THAT SMOKING
3 WASN'T GOOD FOR THEM FROM THE PUBLIC HEALTH COMMUNITIES,
4 CORRECT?
5 A. THAT IS CORRECT.
6 Q. TERMS LIKE COFFIN NAILS WERE USED LONG BEFORE
7 THE 1964 REPORT, RIGHT?
8 A. THAT'S MY UNDERSTANDING, YES.
9 Q. TERM CANCER STICKS?
10 A. I DON'T KNOW EXACTLY WHEN THAT CAME IN.
11 Q. YOU WOULDN'T DISPUTE THAT IT WAS FROM AROUND
12 1958?
13 A. THAT WOULD SEEM CORRECT, YES.
14 Q. AND THOSE ARE NOT POSITIVE NAMES FOR
15 CIGARETTES, CORRECT?
16 A. THAT'S CORRECT.
17 Q. NOT MEANT TO DENOTE THAT THESE ARE THINGS THAT
18 ARE GOOD FOR YOU?
19 A. THAT'S CORRECT.
20 Q. NOW, IN ADDITION TO THE SURGEON GENERAL'S
21 REPORT, THE PUBLIC HEALTH COMMUNITY AND PHYSICIANS AND
22 TEACHERS HAVE DONE A LOT OF OTHER THINGS TO ENCOURAGE PEOPLE
23 NOT TO SMOKE OR TO QUIT, RIGHT?
24 A. THAT'S CORRECT.
25 Q. WE COULD TALK ABOUT WARNINGS ON THE PACKAGES,
26 CIGARETTES, AFTER FROM 1966 ON?
27 A. YES. WE COULD TALK ABOUT THAT.
28 Q. OKAY. THE GOVERNMENT SPONSORED QUITTING
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5941
1 PROGRAMS IN PUBLIC SERVICE ANNOUNCEMENTS AFTER 1964?
2 THE COURT: IS THAT -- ARE YOU TOUCHING THAT MIKE IN
3 ANY WAY.
4 MS, WILKINSON: IT'S DR. BURNS FAULT, TOO.
5 THE WITNESS: MOST ELECTRICAL AND MECHANICAL FAILURES
6 ARE. BUT I WILL KEEP MY HANDS OFF IT.
7 THE COURT: THANK YOU.
8 THE WITNESS: AS MY COMPUTER PEOPLE ASK ME TO DO WITH
9 ALL COMPUTER THINGS.
10 Q. BY MS. WILKINSON: WE WERE TALKING ABOUT THE
11 GOVERNMENT SPONSORED PUBLIC SERVICE ANNOUNCEMENTS AND OTHER
12 QUITTING ADVERTISING.
13 A. BOTH FEDERAL AND STATE GOVERNMENTS DID THAT.
14 Q. AND VOLUNTARY ORGANIZATIONS LIKE THE AMERICAN
15 CANCER SOCIETY HAVE SPONSORED PROGRAMS AND PUBLIC SERVICE
16 ANNOUNCEMENTS FOR MANY, MANY YEARS?
17 A. THEY HAVE.
18 Q. HERE IN CALIFORNIA, WE HAVE SOME VERY SPECIFIC
19 INITIATIVES AND PROGRAMS TO HELP PEOPLE STOP OR TO QUIT
20 SMOKING -- I MEAN -- EXCUSE ME -- TO STOP OR TO ENCOURAGE
21 THEM NOT TO START SMOKING?
22 A. THAT IS ALSO CORRECT.
23 Q. WARNINGS WERE PUT ON THE PACKAGE IN DIFFERENT
24 FORMS BUT STARTING IN 1966 --
25 A. THAT'S CORRECT.
26 Q. -- ON EVERY PACKAGE OF CIGARETTES EVER
27 MANUFACTURED IN THE UNITED STATES?
28 A. THAT'S CORRECT.

1 Q. AND AFTER THAT WAS DONE, THOUGH, THE AMERICAN
2 CANCER SOCIETY PUT OUT A PUBLIC SERVICE ANNOUNCEMENT.

3 ARE YOU FAMILIAR WITH THIS, WHICH WE'RE GOING
4 MARK AS THE NEXT EXHIBIT?

5 THE COURT: IT WILL BE 26. AND WHAT DO I CALL IT,
6 EXACTLY. 26 FOR IDENTIFICATION

7 MS. WILKINSON: IT IS THE PUBLIC SERVICE ANNOUNCEMENT
8 ENTITLED, "CONGRESS HAS ACTED."

9 THE COURT: 1966 PUBLIC SERVICE ANNOUNCEMENT IS
10 MARKED FOR IDENTIFICATION, 26.

11
12 (I.D. 26 - 1966 PSA "CONGRESS HAS ACTED")
13

14 Q. BY MS. WILKINSON: YOU'RE FAMILIAR WITH THIS,
15 DR. BURNS?

16 A. I'VE SEEN THAT BEFORE, YES.

17 Q. OKAY. AND THIS PUBLIC SERVICE ANNOUNCEMENT
18 TALKS ABOUT THE WARNING ON THE PACKAGES AS IT WAS PRINTED IN
19 1966, RIGHT?

20 A. WELL, I CAN'T SEE IT BECAUSE OF MR. PIUZE'S
21 HEAD.

22 Q. WE ALL HAVE THAT PROBLEM.

23 A. BUT ASSUMING IT'S THE SAME ONE.

24 Q. EXCUSE ME, MR. PIUZE.

25 THIS SAYS -- AND I JUST WANT -- BECAUSE THE
26 WARNINGS CHANGED, RIGHT, OVER THE YEARS?

27 A. THAT'S CORRECT.

28 Q. THIS ONE SAYS, "CAUTION: CIGARETTE SMOKING MAY
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5943

1 BE HAZARDOUS TO YOUR HEALTH."

2 A. THAT'S WHAT IT SAYS.

3 Q. THAT WARNING WAS ONLY ON THE PACKAGES FROM '66
4 THROUGH PART OF '69?

5 A. THAT'S CORRECT.

6 Q. THEN IT CHANGED --

7 A. THAT'S CORRECT.

8 Q. -- TO, IT IS DANGEROUS, RIGHT?

9 A. WELL, TO THE SURGEON GENERAL HAS DETERMINED
10 THAT CIGARETTE SMOKING IS HAZARDOUS TO YOUR HEALTH.

11 Q. THANK YOU.

12 SO THIS AD WAS PUT OUT WHEN THE 1966 WARNING
13 WAS ON THE PACKAGE, RIGHT?

14 A. PROBABLY AFTER THE WARNING LABEL APPEARED, YES.

15 Q. RIGHT. AND IT SAYS, "CONGRESS HAS ACTED, THE
16 NEXT STEP IS YOURS"?

17 A. THAT'S CORRECT.

18 Q. YOU BELIEVE THAT, DON'T YOU?

19 A. WHAT ARE YOU ASKING ME?

20 Q. THAT THE NEXT STEP IS THE SMOKER'S
21 RESPONSIBILITY?

22 A. IT IS ALWAYS THE SMOKER'S ACTION THAT LEADS TO
23 CESSATION. I'M NOT SURE WHAT YOU'RE ASKING ME.

24 Q. YOU SAID YOU BELIEVE IN PERSONAL RESPONSIBILITY
25 FOR SMOKERS?

26 A. YES, I DO.

27 Q. AND SMOKERS HAVE TO DECIDE TO QUIT?

28 A. OBVIOUSLY.

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1 Q. EVEN IF THEY'RE ADDICTED, THEY'VE GOT TO MAKE

2 THAT DECISION?
3 A. THEY ALWAYS HAVE TO TAKE A FIRST STEP OF TRYING
4 TO STOP, THAT'S CORRECT.
5 Q. LET'S GO BACK TO THE WARNINGS.
6 YOU TOLD US WHAT THE 1969 WARNING IS.
7 CAN YOU PUT THAT UP ON THE SCREEN, WHICH IS A
8 DEMONSTRATIVE G-2.8, WHICH, YOUR HONOR, WE'D LIKE TO MARK.
9 THE COURT: 27 FOR IDENTIFICATION IS -- HELP ME AGAIN
10 HERE.
11 MS. WILKINSON: IT IS THE 1969 --
12 THE COURT: 1969.
13 MS. WILKINSON: -- WARNING.
14 THE COURT: WARNING.
15
16 (I.D. 27 - 1969 WARNING)
17
18 Q. BY MS. WILKINSON: DR. BURNS, TAKE A LOOK AT
19 THAT. WAS THAT THE WARNING THAT WAS MANDATED BY CONGRESS TO
20 BE PUT ON EVERY PACKAGE OF CIGARETTES FROM 1969 INTO 1985?
21 A. THAT IS CORRECT.
22 Q. THAT'S THE ONE YOU DESCRIBED THAT SAYS, NOW,
23 THE SURGEON GENERAL HAS DETERMINED CIGARETTE SMOKING IS
24 DANGEROUS, NOT HAZARDOUS, RIGHT?
25 A. THAT'S CORRECT.
26 Q. YOU SAID HAZARDOUS, BUT YOU MEANT DANGEROUS?
27 A. I MEANT DANGEROUS, THAT'S CORRECT.
28 Q. IN 1985, CONGRESS THEN SAID, WE WANT TO HAVE
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5945
1 DIFFERENT WARNINGS ROTATE ON THE PACKAGE, RIGHT?
2 A. THAT IS CORRECT.
3 Q. AND THOSE ARE EVEN MORE SPECIFIC?
4 A. THAT'S CORRECT.
5 Q. LET'S PUT THOSE UP.
6 AND YOUR HONOR, WE'RE GOING TO MARK THOSE
7 AS 28?
8 THE COURT: 28. 28 IS THE 19 -- WHAT DATE. '85.
9 MS. WILKINSON: YES, YOUR HONOR, TO PRESENT.
10 THE COURT: '85 TO PRESENT WARNINGS ON CIGARETTE
11 PACKS.
12
13 (I.D. 28 - '85 TO PRESENT WARNINGS)
14
15 Q. BY MS. WILKINSON: THAT'S RIGHT, DR. BURNS,
16 RIGHT?
17 THESE WARNINGS ARE STILL ON CIGARETTE PACKS
18 TODAY?
19 A. THAT'S MY UNDERSTANDING, YES.
20 Q. IF I WENT DOWN TO A 7-ELEVEN, ONE OF THESE
21 WARNINGS WOULD BE ON A PACKAGE OF ANY CIGARETTES I PICKED UP?
22 A. I WOULD HOPE SO.
23 Q. YOU HAVE NO REASON TO BELIEVE THEY WOULDN'T?
24 A. I HAVE NO REASON TO BELIEVE THEY SHOULDN'T.
25 Q. AND YOU'D MAKE THE TOBACCO COMPANY GET IN IF
26 THEY DIDN'T, IF YOU KNEW ABOUT IT?
27 A. I WOULD PROBABLY LET SOMEONE KNOW, YES.
28 Q. THIS WARNING, THE FIRST ONE, SPECIFICALLY SAYS,
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5946
1 SMOKING CAUSES LUNG CANCER, RIGHT?
2 A. THAT'S CORRECT.
3 Q. BUT THAT WAS WHAT THE SURGEON GENERAL SAID
4 ABOUT MEN BACK IN 1964?

5 A. THAT WAS THE CONCLUSION OF THE ' 64, REPORT,
6 THAT'S CORRECT.

7 Q. THE NEXT WARNING SAYS THAT, QUITTING SMOKING
8 NOW GREATLY REDUCES SERIOUS RISK TO YOUR HEALTH?

9 A. ACTUALLY, THE WAY TO READ THAT IS
10 SMOKING -- SMOKING NOW GREATLY REDUCES SERIOUS RISK TO YOUR
11 HEALTH.

12 Q. SORRY. I THOUGHT I SAID THAT, BUT I SPEAK
13 RATHER QUICKLY AND MAYBE I MUFFLED MY WORDS. BUT THE POINT
14 IS, IT TELLS YOU THAT QUITTING -- THERE'S A BY TO QUITTING?

15 A. THAT'S CORRECT.

16 Q. AND YOU BELIEVE THAT THAT'S WHY YOU TELL ANYONE
17 YOU TREAT FOR CHEST PROBLEMS RELATING TO SMOKING THEY SHOULD
18 QUIT?

19 A. ACTUALLY, I TELL ANYBODY WHO SMOKES TO QUIT.

20 Q. GOOD. SO EVEN IF THEY'RE HEALTHY -- IN FACT,
21 THAT'S EVEN A BETTER TIME, IF THEY APPEAR HEALTHY, TO GET
22 THEM TO QUIT AS SOON AS POSSIBLE?

23 A. THAT'S CORRECT.

24 Q. AND THAT'S WHY THE SURGEON GENERAL AND THE
25 PUBLIC HEALTH COMMUNITY UNDERTOOK THAT HUGE PUBLIC HEALTH
26 CAMPAIGN IN 1964 TO EDUCATE THE PUBLIC, RIGHT?

27 A. TO PERSUADE PEOPLE TO QUIT AND TO PREVENT
28 PEOPLE FROM STARTING, YES.

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5947

1 Q. RIGHT. BECAUSE THEY LITERALLY THOUGHT IT COULD
2 SAFE THEIR LIVES?

3 A. YES.

4 Q. NOW, ASSUMING MR. RELLER SMOKED SOMEWHERE
5 BETWEEN A PACK UP TO TWO AND A HALF PACKS OF CIGARETTES A DAY
6 FROM -- WE KNOW FROM SOMEWHERE AROUND 1955, BUT WHEN WE TALK
7 ABOUT THE WARNINGS FROM 1966 TO 2000, THAT MEANS HE PICKED UP
8 THAT PACKAGE OF CIGARETTES AND SAW THE WARNING HUNDREDS OF
9 THOUSANDS OF TIMES, RIGHT?

10 A. YES.

11 Q. YOU WOULDN'T QUIBBLE IF I SAID IT WAS SOMEWHERE
12 AROUND 420,000 TIMES?

13 A. NO. THE ONLY QUIBBLE I WOULD HAVE WITH THAT
14 STATEMENT WOULD BE THAT MOST SMOKERS DON'T ACTUALLY SEE THE
15 WARNING LABEL WHEN THEY'RE SMOKING.

16 Q. RIGHT. SO THEY MAY NOT READ IT EVERY TIME, BUT
17 IT'S ON THE PACKAGE EVERY TIME THEY PICK IT UP?

18 A. THAT'S CORRECT.

19 Q. AND YOU CAN'T AS A MEMBER OF THE PUBLIC HEALTH
20 COMMUNITY, FORCE THEM TO READ?

21 A. NO. CERTAINLY NOT.

22 Q. ONCE THE SURGEON GENERAL'S REPORT CAME OUT IN
23 1964, THERE WAS A GOVERNMENT COORDINATION COMMITTEE CALLED
24 THE NATIONAL INTERAGENCY CLEARINGHOUSE ON SMOKING AND HEALTH
25 THAT STARTED TO HELP PERPETUATE THE PUBLIC HEALTH CAMPAIGN,
26 CORRECT?

27 A. THAT'S CORRECT.

28 Q. ALL RIGHT. AND THEY WERE KIND OF A PARENT
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5948

1 COMMITTEE THAT HELPED A LOT OF OTHER ORGANIZATIONS GET GOING?

2 A. WELL, THEY WERE ACTUALLY A COORDINATING
3 COMMITTEE FOR THOSE ORGANIZATIONS WHO HAD AN INTEREST IN
4 WORKING IN THE AREA.

5 Q. THAT INCLUDED THE UNITED STATES PUBLIC HEALTH
6 SERVICE?

7 A. YES.

8 Q. THE NATIONAL CANCER INSTITUTE?
9 A. YES.
10 Q. YOU'VE WORKED WITH THE NATIONAL CANCER
11 INSTITUTE, RIGHT?
12 A. I HAVE.
13 Q. HIGHLY REGARDED AGENCY?
14 A. YES.
15 Q. SOME OF THE BEST CANCER SCIENTISTS IN THE WORLD
16 START THERE?
17 A. I'M NOT SURE WHAT YOU MEAN BY START THERE, BUT,
18 YES.
19 Q. WELL, SOME YOUNG SCIENTISTS GET TO WORK THERE
20 AND SOME OLDER SCIENTISTS WHO ARE VERY WELL REGARDED PURSUE
21 WORK THERE TO PURSUE CANCER RESEARCH?
22 A. THAT'S RIGHT.
23 Q. THAT'S BEEN TRUE, A LOT OF YOUNG SCIENTISTS GO
24 THERE TO GET THEIR RESEARCH FUNDED?
25 A. WELL, THE RESEARCH FUNDING COMES FROM THERE TO
26 THE UNIVERSITIES AND THAT FUNDS MANY YOUNGER INVESTIGATORS,
27 YES.
28 Q. BUT THE NATIONAL CANCER INSTITUTE ALSO HAS ITS
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5949
1 OWN CANCER SCIENTISTS?
2 A. THEY HAVE AN INTERNAL RESEARCH PROGRAM AS WELL
3 AS THE EXTERNAL BRANCH.
4 Q. YOU HOLD THEM IN HIGH REGARD, I SUPPOSE?
5 A. YES, I DO.
6 Q. AND YOU ALWAYS HAVE, BASED ON YOUR STUDY,
7 LOOKING BACK ON THE SCIENTISTS THAT WERE INVOLVED WITH THE
8 NATIONAL CANCER INSTITUTE?
9 A. WITH SOME EXCEPTIONS, YES.
10 Q. NOW, GETTING BACK TO SOME UMBRELLA GROUP.
11 DID IT ALSO INCLUDE THE DEPARTMENT OF HEALTH
12 FROM DIFFERENT STATES, INCLUDING CALIFORNIA?
13 A. I CAN'T TELL YOU WHETHER THE INDIVIDUAL
14 DEPARTMENTS OF HEALTH WERE REPRESENTED. PROBABLY THEY WERE
15 REPRESENTED BY THEIR COMMON GROUP, THAT IS, THE STATE AND
16 TERRITORIAL HEALTH OFFICES.
17 Q. IT INCLUDED VOLUNTARILY ORGANIZATIONS LIKE THE
18 AMERICA CANCER AND THE AMERICAN HEART ASSOCIATION?
19 A. YES, DID IT.
20 Q. AMERICAN LUNG ASSOCIATION?
21 A. YES. IT DID.
22 Q. AND THEIR IDEA WAS TO PUT OUT THE WORD AS SOON
23 AS POSSIBLE AFTER THE 1964 REPORT THAT SMOKING CAUSED LUNG
24 CANCER?
25 A. THAT WAS ONE OF THEIR GOALS, YES.
26 Q. THE OTHER GOAL WAS TO TELL PEOPLE NOT TO START
27 SMOKING?
28 A. YES.
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5950
1 Q. AND IF YOU DID, TO QUIT?
2 A. THAT'S CORRECT.
3 Q. THEY DISTRIBUTED COPIES AND SUMMARIES OF THE
4 SURGEON GENERAL REPORT?
5 A. YES.
6 Q. THEY SPONSORED RADIO AND TV ADS ALL ACROSS THE
7 COUNTRY STARTING AS FAR BACK AS 1964, 1965?
8 A. YES.
9 Q. THEY EVEN DISTRIBUTED COMIC BOOKS IN SCHOOLS
10 FOR CHILDREN TO START LEARNING ABOUT THE DANGERS OF SMOKING?

11 A. THEY DISTRIBUTED PUBLIC HEALTH MESSAGES IN THE
12 FORM OF COMIC BOOKS, YES.
13 Q. THE IDEA IS TO START EDUCATING KIDS AS YOUNG AS
14 POSSIBLE SO THAT THEY'LL NEVER START?
15 A. THAT'S CORRECT.
16 Q. AND IN THERE, THEY TALKED ABOUT LUNG CANCER IN
17 CIGARETTE SMOKING --
18 A. YES.
19 Q. -- IN WAYS THEY THOUGHT YOUNG CHILDREN COULD
20 UNDERSTAND?
21 A. YES.
22 Q. AND THERE WERE COPIES OF SOME OF THEIR
23 EDUCATIONAL MATERIALS IN A "READER'S DIGEST" ARTICLE ABOUT
24 LUNG CANCER AND SMOKING?
25 A. "READER'S DIGEST" PUBLISHED SEVERAL ARTICLES
26 THAT EDUCATED THE PUBLIC ABOUT THE RISKS. I CAN'T TELL YOU
27 WHETHER THE -- WHETHER THE VOLUNTARY HEALTH AGENCY MATERIALS
28 WAS SPECIFICALLY REPRODUCED IN THOSE VOLUMES.
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5951

1 Q. OVER THE YEARS, OTHER ORGANIZATIONS STARTED
2 SPONSORING SMOKING CESSATION PROGRAMS, RIGHT?
3 A. THAT'S CORRECT.
4 Q. WHEN WE SAY CESSATION, THAT'S JUST A FANCY WORD
5 FOR QUITTING PROGRAMS?
6 A. YES.
7 Q. SO PEOPLE WHO WANTED TO QUIT COULD ATTEND, FOR
8 EXAMPLE, A SEVENTH-DAY ADVENTIST PROGRAM?
9 A. THEY COULD.
10 Q. YOU'RE FAMILIAR WITH THAT PROGRAM?
11 A. YES, I AM.
12 Q. IT WAS A FIVE-DAY PROGRAM, RIGHT --
13 A. THAT'S CORRECT.
14 Q. -- SMOKERS ATTENDED TO TRY TO QUIT?
15 A. YES.
16 Q. AND THAT WAS A PROGRAM THAT HAD BEEN UNDERWAY
17 FOR A LONG TIME OR HAS BEEN UNDERWAY FOR A LONG TIME, RIGHT?
18 A. YES.
19 Q. IN FACT, IN 19 -- WELL, FIRST, LET'S GO BACK.
20 YOU TOLD US THAT YOU WON AN AWARD NAMED AFTER
21 DR. OSCHNER, RIGHT?
22 A. THAT'S RIGHT.
23 Q. AND YOU HOLD HIM IN VERY HIGH REGARD?
24 A. YES, I DO.
25 Q. HE'S MADE FABULOUS CONTRIBUTIONS TO SMOKING AND
26 HEALTH RESEARCH AND SCIENCE, RIGHT?
27 A. YES, HE HAS.
28 Q. AND HE WAS OPPOSED TO SMOKING?
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1 A. HE WAS.
2 Q. AND IN FACT, HE EVEN PARTICIPATED IN A FILM
3 THAT SEVENTH-DAY ADVENTIST MADE BACK IN 1959 TO HELP EDUCATE
4 PEOPLE ABOUT THE DANGERS OF SMOKING?
5 A. YEAH. HE MAY HAVE. I'M NOT FAMILIAR WITH
6 THAT PARTICULAR FILM.
7 Q. OKAY. DO YOU KNOW WHAT DR. OSCHNER LOOKS LIKE?
8 A. YES.
9 Q. OR LOOKED LIKE?
10 A. YES.
11 Q. HE'S NO LONGER WITH US.
12 A. HE'S NO LONGER ALIVE.
13 Q. IF I SHOWED YOU A PICTURE OF HIM FROM A FILM,

14 COULD YOU IDENTIFY HIM?
15 A. PROBABLY.
16 Q. ALL RIGHT.
17 LET'S SHOW XM-1.1.
18 MR. PIUZE: RELEVANCE, YOUR HONOR.
19 THE COURT: I'M SORRY?
20 MR. PIUZE: RELEVANCE. I OBJECT TO RELEVANCE, WHAT
21 DR. OSCHNER LOOKS LIKE.
22 THE COURT: I THINK I KNOW WHAT THIS IS GOING TO.
23 THE FILM LATER ON.
24 MS. WILKINSON: WE'RE LAYING THE FOUNDATION.
25 THE COURT: ALL RIGHT. OVERRULED.
26 AND THIS IS 29 FOR IDENTIFICATION. THIS IS A
27 PHOTO OF -- YOU NEED TO SPELL THE NAME AGAIN FOR ME.
28 MS. WILKINSON: DR. OCHSNER, O-C-H-S-N-E-R, ALTON.
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1 ACTUALLY, THE FILM CLIP, NOT THE PHOTO. SO THAT HE
2 CAN -- ACTUALLY, WE'RE NOT GOING TO PLAY THE WHOLE THING,
3 JUST SO HE CAN IDENTIFY DR. OSCHNER.
4
5 (I.D. 29 - OCHSNER FILM)
6 (EXHIBIT 29 WAS PLAYED AND REPORTED
7 AS FOLLOWS:)
8
9 WELL, I DON'T HAVE GOOD NEWS
10 FOR YOU --
11
12 MS. WILKINSON: STOP RIGHT THERE.
13 Q. DO YOU RECOGNIZE THAT MAN?
14 A. I DO NOT. THE DR. OSCHNER THAT I MET WAS IN
15 HIS 80'S AND HAD A FULL HEAD OF WHITE HAIR AT THAT TIME.
16 Q. SO YOU CAN'T SAY THAT ISN'T DR. OSCHNER, YOU
17 JUST RECOGNIZE HIM FROM THAT FILM?
18 A. I CAN'T IDENTIFY HIM FROM THAT PICTURE.
19 Q. THANK YOU.
20 A. THAT IS DIFFERENT THAN THE MAN THAT I MET.
21 Q. THANK YOU. LET'S TALK ABOUT CALIFORNIA FOR A
22 MINUTE, IF WE CAN.
23 IF YOU CAN TURN THAT OFF. THANK YOU.
24 HERE IN CALIFORNIA, THE CHAPTER OF THE AMERICAN
25 CANCER SOCIETY SPONSORED THE FIRST GREAT AMERICAN SMOKE OUT,
26 DIDN'T THEY?
27 A. I BELIEVE THAT'S CORRECT, YES.
28 Q. SO CALIFORNIA HAS BEEN ON THE CUTTING EDGE IN
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1 TERMS OF EDUCATING ITS CITIZENS ABOUT THE DANGERS OF SMOKING?
2 A. I BELIEVE THAT'S ALSO CORRECT.
3 Q. AND IN THE GREAT AMERICAN SMOKE OUT, THE
4 MESSAGE WAS TO TRY TO GET EVERYBODY IN THE U.S. TO STOP
5 SMOKING FOR AT LEAST A DAY?
6 A. THAT'S CORRECT.
7 Q. AND AT FIRST, THEY DID THAT -- SEVERAL MILLION
8 PEOPLE, AMERICANS, PARTICIPATED, RIGHT?
9 A. THAT'S THE ESTIMATE, YES.
10 Q. AND OVER THE YEARS, THE NUMBER OF PARTICIPANTS
11 WENT UP?
12 A. THE ESTIMATES WENT HIGHER, THAT'S CORRECT.
13 Q. HIGHER UP -- IS THERE SOME DIFFERENCE,
14 DR. BURNS OR --
15 A. I'M JUST SAYING THAT I DIDN'T DO A VALIDATION
16 TO KNOW THAT THE MEASURES USED WERE COMPARABLE.

17 Q. DO YOU HAVE ANY DISPUTE WITH THE FACT
18 THAT -- OR THE STATEMENT THAT AT ONE POINT, 24 MILLION
19 AMERICANS PARTICIPATED IN THE GREAT AMERICAN SMOKE OUT?
20 A. I DON'T DISPUTE THAT, NO.
21 Q. IN THIS STATE, WE ALSO HAVE AMERICANS FOR
22 NONSMOKERS' RIGHT?
23 A. THAT'S CORRECT.
24 Q. AND IT WAS CALLED CALIFORNIA FOR NONSMOKERS,
25 RIGHT?
26 A. CALIFORNIANS FOR NONSMOKERS -- CALIFORNIANS FOR
27 NONSMOKERS RIGHTS, THAT'S CORRECT.
28 Q. THERE'S A GROUP CALLED THAT?
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1 A. THERE IS A GROUP CALLED GAS THAT, YES.
2 Q. GROUP AGAINST SMOKING POLLUTION?
3 A. YES.
4 Q. AND THAT WAS STARTED HERE IN CALIFORNIA AS
5 WELL?
6 A. I DON'T BELIEVE THAT'S CORRECT, ALTHOUGH I
7 COULD BE WRONG. I THOUGHT IT WAS STARTED ON THE EAST COAST,
8 BUT I COMPANY BE WRONG.
9 Q. BUT REGARDLESS, IT OPERATES HERE NOW IN
10 CALIFORNIA AND HAS FOR MANY YEARS?
11 A. YES.
12 Q. YOU KNOW THAT MR. RELLER HAS LIVED HERE IN
13 CALIFORNIA SINCE 1970, RIGHT?
14 A. THAT IS MY UNDERSTANDING, YES.
15 Q. DO YOU KNOW THAT HE LIVED AND WORKED IN
16 [DELETED]?
17 A. THAT'S ALSO MY UNDERSTANDING.
18 Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THIS
19 CALIFORNIA CAMPAIGN WE'VE JUST BEEN TALKING ABOUT WAS FOCUSED
20 IN CALIFORNIA BUT DIDN'T FOCUS ON BEVERLY HILLS OR
21 MARINA DEL REY?
22 A. NO.
23 Q. AS FAR AS YOU KNOW, IT FOCUSED ON THE ENTIRE
24 STATE?
25 A. BOTH YES AND NO. IT WAS INTENDED TO COVER THE
26 ENTIRE STATE. IT FOCUSED ON THOSE AREAS AND THOSE
27 POPULATIONS THAT HAD THE HIGHEST RATES OF SMOKING, WHICH
28 WOULD NOT PROBABLY LEAD IT TO FOCUS ON MARINA DEL REY.
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1 Q. WELL, IT FOCUSED ON LOS ANGELES, RIGHT?
2 A. IT FOCUSED ON LOS ANGELES, BUT NOT THE UPPER
3 SOCIOECONOMIC ASPECTS OR AREAS OF LOS ANGELES.
4 Q. WELL, IF THERE WERE WAYS IN WHAT THEY CALL
5 MEDIA MARKETS, RIGHT, IN L.A., MARINA DEL RAY EVEN SEES A LOT
6 OF THE NEWS SHOWN IN L.A., RIGHT?
7 A. THE PROGRAM COVERED THE ENTIRE STATE, YES.
8 Q. IN 1999 WHEN PHILIP MORRIS PUT ON ITS WEB SITES
9 THAT THE OVERWHELMING CONSENSUS OF THE PUBLIC HEALTH
10 COMMUNITY WAS THAT SMOKING CAUSED CANCER AND THAT SMOKING IS
11 ADDICTIVE, THAT RECEIVED A LOT OF PRESS, DIDN'T IT?
12 A. I BELIEVE IT DID, YES.
13 Q. YOU THOUGHT THAT WAS A GOOD IDEA FOR THEM TO
14 ACKNOWLEDGE THAT, CORRECT?
15 A. PARTIALLY. I NEED TO EXPLAIN THAT ANSWER, IF
16 YOU'D LIKE ME TO.
17 Q. WELL, LET'S START -- IT WAS BETTER, THAN NOT
18 ACKNOWLEDGING IT, RIGHT?
19 A. IT WAS BETTER THAN NOT ACKNOWLEDGING IT AND

20 BETTER THAN THEIR PRIOR POSITION.
21 Q. AND THERE WAS PRESS WITH THAT.
22 YOU DON'T HAVE TO TELL THE PATIENTS YOU SEE
23 WHAT THE TOBACCO COMPANY'S POSITION IS, RIGHT?
24 A. NO, I DON'T USE THEM AS A CREDIBLE AUTHORITY.
25 Q. RIGHT?
26 A. THAT'S CORRECT.
27 Q. NEVER HAVE, HAVE YOU?
28 A. NO.

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1 Q. OKAY. SO THE FACT THAT IN 1999, PHILIP MORRIS
2 ACKNOWLEDGED THAT AND IN 2000 ADDED THE WORDS, WE AGREE,
3 THAT'S NOT SOMETHING YOU SHARE WITH YOUR PATIENTS?
4 A. NOT UNLESS IT COMES UP, BUT, NO, THAT WOULDN'T
5 BE PART OF THE DIRECT COMMUNICATION I WOULD HAVE WITH MY
6 PATIENTS, NO.
7 Q. SO YOU DON'T USE IT TO TRY TO STOP THEM -- OR
8 AFFECT THEM TO HELP THEM QUIT?
9 A. NO.
10 Q. OKAY. AND YOU SURELY, I WOULD IMAGINE, DON'T
11 SHARE THE POSITION OF ANOTHER TOBACCO COMPANY LIKE REYNOLDS
12 THAT DOESN'T ACKNOWLEDGE THAT TO THIS DAY?
13 A. NO, I DON'T THINK I DO, NO.
14 Q. RIGHT?
15 A. I'M A LITTLE CONFUSED BY THE FORM OF YOUR
16 QUESTION.
17 Q. OKAY.
18 A. CERTAINLY --
19 Q. I'M JUST TRYING TO MAKE A SIMPLE POINT, WHICH,
20 IS, YOU DON'T USE THE TOBACCO COMPANY'S POSITION IN WHETHER
21 IT AGREES WITH WHAT THE PUBLIC HEALTH COMMUNITY SAYS OR IT
22 TAKES ISSUE WITH IT TO PERSUADE A SMOKER TO STOP SMOKING, YES
23 OR NO?
24 A. NOT IN THE CONTEXT OF THEM COMING TO ME FOR
25 MEDICAL ADVICE. IF THEY ASKED ME, YOU KNOW, WELL, OTHER
26 FOLKS SAY THAT THERE ISN'T A RISK, THEN I WOULD USE THAT
27 INFORMATION, BUT NOT IN THE CONTEXT OF A NORMAL
28 COMMUNICATION.

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1 Q. SURE. SO YOU -- WHEN SOMEONE YOU'RE TREATING,
2 AND THEY SMOKE, YOU'RE TRYING TO PERSUADE THEM TO QUIT, YOU
3 TELL THEM ABOUT THE DANGERS?
4 A. YES.
5 Q. YOU TELL THEM ABOUT HOW QUITTING CAN HELP THEM?
6 A. YES.
7 Q. AND IN FACT, YOU TELL THEM IT'S NEVER TOO LATE
8 TO QUIT?
9 A. THAT'S CORRECT.
10 Q. EVEN IF THEY'VE BEEN SMOKING FOR A VERY LONG
11 TIME?
12 A. THAT'S CORRECT.
13 Q. SO IN MR. RELLER'S CASE, WOULD YOU HAVE TOLD
14 HIM TO STOP SMOKING IN 1964 IF YOU HAD BEEN PRACTICING
15 MEDICINE AT THE TIME?
16 A. THAT'S CORRECT.
17 Q. YOU WOULD HAVE TOLD HIM IN 1971?
18 A. THAT'S CORRECT.
19 Q. OR 1973 WHEN HE SWITCHED TO BENSON & HEDGES
20 MENTHOL, YOU WOULD HAVE SAID, DON'T SWITCH, QUIT?
21 A. THAT'S CORRECT.
22 Q. YOU WOULD HAVE TOLD HIM IN THE 1980S, LIKE

23 1988, DON'T SMOKE?
24 A. THAT'S CORRECT.
25 Q. AND ANY TIME IN THE 1990'S, YOU WOULD HAVE
26 SAID, DON'T SMOKE, QUIT NOW?
27 A. THAT'S CORRECT.
28 Q. AND YOU WOULD HAVE SAID THAT BECAUSE YOU WOULD
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1 HAVE SAID, THERE'S A VERY GOOD CHANCE YOU'RE GOING TO GET
2 SOME KIND OF DISEASE AND IT COULD BE TERMINAL?
3 A. THAT'S CORRECT. WELL --
4 Q. YOU COULD GET SOMETHING THAT'S NOT TERMINAL,
5 BUT WORSE, YOU COULD GET A TERMINAL DISEASE FROM SMOKING?
6 A. YES.
7 Q. NOW, YOU WOULD TELL HIM THAT EVEN THOUGH YOU
8 COULDN'T SAY FOR SURE, LET'S SAY, BACK IN THE MID 1990'S,
9 LET'S SAY, 1995, IF HE HAD COME TO SEE YOU THEN, YOU COULD
10 NOT TELL HIM FOR SURE HE WAS THE ONE WHO WOULD GET LUNG
11 CANCER?

12 A. THAT'S CORRECT.
13 Q. ALL RIGHT. SO YOU SHOWED US ALL THOSE CHARTS
14 ABOUT HOW CANCER DEVELOPS, RIGHT, IN THE LUNG, RIGHT, SOME OF
15 THESE CHARTS?

16 THIS IS 12008, WHICH IS 7. THIS IS EXHIBIT
17 NO. 7.

18 A. I SHOWED THAT CHART, YES.

19 Q. THIS SHOWS CARCINOMA, RIGHT?

20 A. CARCINOMA IN SITU, YES.

21 Q. AND IF MR. RELLER HAD QUIT, I BELIEVE YOU SAID,
22 OR ANYONE HAD QUIT SMOKING, YOU CAN ACTUALLY DO SOME REPAIR
23 TO CELL DAMAGE CAUSED BY SMOKING?

24 A. NOT AT THAT STAGE. AT EARLIER STAGES, THERE IS
25 RECOVERY OF THE LUNG FOR REMOVAL OF THE IRRITANTS AND TOXIC
26 SUBSTANCES A.

27 Q. SO THE EARLIER YOU TELL SOMEONE TO QUIT, THE
28 BETTER OFF THEY ARE?

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1 A. NO. THE EARLIER THEY QUIT, THE BETTER OFF THEY
2 ARE.

3 Q. THANK YOU.

4 A. THAT'S CORRECT.

5 Q. RIGHT. DOESN'T DO ANY GOOD TO TELL THEM IF
6 THEY DON'T WANT TO QUIT?

7 A. IT DOESN'T DO ANY GOOD IF THEY DON'T QUIT BASED
8 ON THAT INFORMATION. THAT DOESN'T ALTER THEIR RISK IF THEY
9 DON'T QUIT.

10 Q. HAVE YOU EVER TALKED TO THEM OR EVER HEARD
11 TERMINOLOGY ABOUT DISCUSSING WITH THEM THE SECONDARY GAINS
12 THAT YOU GET FROM QUITTING SMOKING?

13 A. I HAVE USED THAT TERMINOLOGY, YES.

14 Q. TELL US WHAT THAT MEANS?

15 A. WELL, SECONDARY GAIN IS SOMETHING THAT OCCURS
16 IN THE FACE OF A PRIMARY NEGATIVE CONSEQUENCE.

17 THAT IS, IT IS COMMONLY USED IN PSYCHIATRY, FOR
18 EXAMPLE, FOR SOMEONE WHO HAS WHAT'S CALLED HYSTERICAL
19 PARALYSIS, WHERE THEY'RE PSYCHIATRIC ILLNESS RATHER THAN
20 PHYSICAL ILLNESS IS CAUSING THEM NOT TO BE ABLE TO MOVE AN
21 ARM.

22 AND THE REASON FOR THAT PSYCHIATRIC
23 MANIFESTATION IS FELT TO REFLECT A SECONDARY GAIN; THAT IS,
24 THE ATTENTION THAT THEY RECEIVE OR THE ABILITY TO AVOID
25 HAVING TO DO SOMETHING THAT THEY WOULD HAVE HAD TO DO HAD

26 THEY NOT BEEN PARALYZED.
27 SO IT IS USED IN THE CONTEXT OF A PRIMARY,
28 NEGATIVE HEALTH CONSEQUENCE, BUT THERE IS SOME SECONDARY
5961
1 PSYCHOLOGICAL BENEFIT.
2 Q. AND WHEN YOU TALK TO YOUR PATIENTS ABOUT
3 QUITTING, DO YOU TELL THEM IT'S IMPORTANT THAT THEY WORK HARD
4 AT IT?
5 A. YES.
6 Q. SO GOING THROUGH THE MOTIONS IS NOT GOING TO BE
7 ENOUGH, THEY HAVE TO REALLY WORK AT IT?
8 A. FOR SOME, THEY CAN SIMPLY PUT THEM ASIDE. FOR
9 MOST, THEY HAVE TO WORK AT IT.
10 Q. IN 1964, MR. RELLER WAS 25 YEARS OLD, RIGHT?
11 A. OKAY.
12 Q. I BELIEVE YOU TOLD US AT THE BEGINNING OF MY
13 EXAMINATION THIS MORNING, IF HE HAD QUIT WHEN THE SURGEON
14 GENERAL ISSUED THE WARNING THAT SMOKING CAUSED LUNG CANCER IN
15 MEN, IT WOULD HAVE BEEN MORE LIKELY THAN NOT THAT HE WOULDN'T
16 HAVE GOTTEN LUNG CANCER?
17 A. THAT'S CORRECT.
18 Q. MORE LIKELY THAN NOT AVOIDED -- SO I DON'T HAVE
19 A DOUBLE NEGATIVE -- LUNG CANCER, RIGHT?
20 A. OKAY.
21 Q. YOU READ MR. RELLER'S DEPOSITION IN THIS CASE?
22 A. I READ PARTS OF HIS DEPOSITION.
23 Q. YOU SAW THAT HE HEARD ABOUT THE SURGEON GENERAL
24 REPORT IN 1964?
25 A. YES.
26 Q. YOU CAN'T TELL THIS JURY -- WELL, LET ME ASK
27 YOU TWO FINAL QUESTIONS. THAT'S ALL I WANT TO ASK.
28 YOU'RE NOT AWARE OF ANYTHING, SPECIFICALLY,

5962
1 THAT PHILIP MORRIS SAID THAT MR. RELLER HEARD OR SAW, ARE
2 YOU, YES OR NO?
3 A. I DON'T UNDERSTAND HOW BROAD YOUR QUESTION'S
4 INTENDED TO BE.
5 THE COURT: HOW PERSONALLY ARE YOU AWARE OF ANYTHING?
6 YOU'RE ASKING PERSONALLY?
7 MS. WILKINSON: YES.
8 THE WITNESS: I HAVE NO PERSONAL KNOWLEDGE OF WHAT
9 MR. RELLER RECEIVED FROM PHILIP MORRIS' INFORMATION.
10 Q. BY MS. WILKINSON: THAT MEANS, THEN, IF I ASK
11 YOU MY FINAL QUESTION, DID ANYTHING PHILIP MORRIS DO AFFECT
12 MR. RELLER, SINCE YOU HAVE NO PERSONAL KNOWLEDGE, YOU CAN'T
13 SAY WHETHER IT DID OR NOT EITHER, CAN YOU?
14 A. I CANNOT OFFER INFORMATION ON A DIRECT EFFECT
15 OF INFORMATION TRANSMITTED FROM PHILIP MORRIS DIRECTLY TO
16 MR. RELLER.
17 Q. YOU WOULDN'T CONTRADICT ANY OF MR. RELLER'S
18 TESTIMONY IN THIS CASE BASED ON HIS PERSONAL KNOWLEDGE, WOULD
19 YOU?
20 A. NO, I WOULD NOT.
21 MS. WILKINSON: I HAVE NO FURTHER QUESTIONS,
22 YOUR HONOR.
23 THE COURT: THANK YOU. MR. PIUZE.
24 MR. PIUZE: LEAVE THAT, PLEASE.
25 MS. WILKINSON: DO YOU WANT THIS?
26 MR. PIUZE: NO.
27 I'VE GOT TO FIGURE OUT A PLACE FOR IT.
28

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REDIRECT EXAMINATION

BY MR. PIUZE:

Q. YOU CAN SEE THIS?

A. I CAN.

THE COURT: I KNOW THAT YOU'RE DRAWING A YELLOW LINE AROUND IT, BECAUSE YOU'RE USING THE MARKER, BUT I CAN'T SEE THE YELLOW LINE. I SURE HOPE THE REST OF YOU CAN.

Q. BY MR. PIUZE: ALTHOUGH YOU CAN'T TELL MS. WILKINSON WHETHER ANY SPECIFIC THING PHILIP MORRIS SAID DIRECTLY MR. RELLER HAD A DIRECT EFFECT ON MR. RELLER, HOW ABOUT THIS?

DO YOU HAVE AN OPINION ABOUT THE EFFECT THAT PHILIP MORRIS' STATEMENTS RIGHT OUT OF ITS OWN MOUTH AND THROUGH THE TIRC, TOBACCO INDUSTRY RESEARCH COUNCIL, CTR, COMMITTEE FOR TOBACCO RESEARCH, AND TI, TOBACCO INSTITUTE, ALL OF WHICH PHILIP MORRIS WAS A MEMBER OF, DO YOU HAVE AN OPINION ABOUT WHETHER STATEMENTS MADE BY PHILIP MORRIS AND THE GROUPS IT WAS A MEMBER OF STARTING IN 1954 AND CONTINUING UNTIL -- I'M JUST GOING TO CHOOSE THE DATE OF OCTOBER 2000 -- HAD AN EFFECT ON THE SMOKING HABITS OF MR. RELLER AND THE AMERICAN SMOKING POPULATION GENERALLY?

THE COURT: THAT'S A YES-OR-NO ANSWER ONLY RIGHT NOW, AND THEN WE'LL GO FROM THERE.

THE WITNESS: YES, I HAVE AN OPINION.

Q. BY MR. PIUZE: WE -- NOT WE -- PHILIP MORRIS' LAWYER JUST TALKED ABOUT ALL OF THE GREAT THINGS THAT YOU AND THE PUBLIC HEALTH COMMUNITY, YOU AND DR. KOOP --

A. UH-HUH.

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Q. -- YOU AND THE STATE OF CALIFORNIA, YOU AND THE PUBLIC HEALTH SERVICE, WERE TRYING TO DO OVER THE COURSE OF YEARS TO GET AMERICANS TO STOP SMOKING.

DO YOU REMEMBER THAT?

A. YES, I DO.

Q. WHILE YOU AND DR. KOOP AND YOU AND THE SURGEON GENERAL AND YOU AND THE PUBLIC HEALTH SERVICE AND YOU AND THE STATE OF CALIFORNIA WERE TRYING TO GET PEOPLE TO STOP SMOKING OVER THAT PERIOD OF TIME, WAS PHILIP MORRIS, AS A MEMBER OF THE TOBACCO INDUSTRY RESEARCH COUNCIL COMMITTEE FOR TOBACCO RESEARCH AND THE TOBACCO INSTITUTE THROUGH ITS PRONOUNCEMENTS MAKING YOUR JOB HARDER?

A. YES, IT MOST CERTAINLY WAS.

Q. AS YOU AND THE PUBLIC HEALTH SERVICE -- AND I'M NOT GOING TO REPEAT THE WHOLE THING -- BUT ALL THESE GREAT PEOPLE WHO WERE TRYING TO GET AMERICANS TO STOP SMOKING FROM 1954 AND CONTINUING RIGHT UP UNTIL NOVEMBER OF 2000, WHILE YOU AND ALL THESE GREAT PEOPLE AND INSTITUTIONS WERE DOING YOUR JOB DILIGENTLY, WAS THERE A DISCORDANT NOTE SOUNDED FROM THE AMERICAN SMOKING POPULATION THROUGH THE TOBACCO INDUSTRY?

A. YES, THERE MOST CERTAINLY WAS.

Q. HERE IN CALIFORNIA, WOULD YOU AGREE -- I GUESS WE HEARD SOME OF THIS -- BUT AS A RESULT OF THE PROPOSITION 99 LAW -- WHEN WAS THAT PASSED?

A. 1988.

Q. IS THAT A TOBACCO CONTROL LAW?

A. IT'S AN INCREASE IN TAX THAT FUNDS TOBACCO CONTROL EFFORTS. IT'S A PROPOSITION.

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Q. ARE YOU A TOBACCO CONTROL PERSON?

A. YES. I BELIEVE THAT I WORK IN THAT AREA.

Q. HOW MUCH IS AVAILABLE THROUGH PROPOSITION 99 TO PUT OUT THESE GOOD MESSAGES TO THE PUBLIC HERE IN CALIFORNIA,

5 STOP SMOKING, STOP SMOKING, STOP SMOKING?
6 A. I BELIEVE IT'S ABOUT \$60 MILLION CURRENTLY.
7 Q. \$60 MILLION?
8 A. CURRENTLY.
9 Q. CURRENTLY. PER YEAR?
10 A. PER YEAR.
11 Q. BACK IN '88, WHAT WAS IT, APPROXIMATELY?
12 A. IT WAS HIGHER AT THAT TIME. I BELIEVE IT WAS
13 ABOUT \$100 MILLION AT THAT TIME.
14 Q. DOES YOUR, THE TOBACCO CONTROL MONEY FROM
15 PROPOSITION 99 THAT'S AVAILABLE HERE, COME EVEN REMOTELY
16 CLOSE TO OFFSETTING AND COUNTERACTING ADVERTISING BUDGETS BY
17 THE TOBACCO INDUSTRY IN THIS STATE?
18 MS. WILKINSON: OBJECTION.
19 THE COURT: YOU NEED TO LAY A FOUNDATION THAT HE
20 WOULD KNOW IT, AND THEN WE'LL SEE WHERE WE'RE GOING FROM
21 THERE.
22 Q. BY MR. PIUZE: DO YOU KNOW IF THE TOBACCO
23 INDUSTRY SPENDS MANY, MANY MULTIPLES OF THAT AMOUNT ON
24 TOBACCO ADVERTISING IN THIS STATE?
25 MS. WILKINSON: OBJECTION.
26 THE COURT: YOU NEED TO -- NUMBER ONE, WHY DON'T YOU
27 ASK HIM FIRST IF HE -- YOUR QUESTION IS LEADING, AND IT ALSO
28 LACKS FOUNDATION. SO DO IT THE RIGHT WAY, AND WE'LL GO
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1 FORWARD.
2 MR. PIUZE: LET ME GET RID OF THE QUESTION. I'M
3 GOING TO MOVE ON TO SOMETHING DIFFERENT.
4 THE WITNESS: OKAY.
5 Q. BY MR. PIUZE: DO YOU REMEMBER WHEN I WAS
6 GIVING YOU DIRECT EXAMINATION LAST THURSDAY, I SHOWED YOU
7 SOME DOCUMENTS FROM THE TOBACCO INDUSTRY RESEARCH COUNCIL AND
8 THE TOBACCO INSTITUTE, COMMITTEE FOR TOBACCO RESEARCH, ALL
9 THOSE?
10 A. YES.
11 Q. DO YOU REMEMBER HOW ONE OF THEM -- HERE. THIS
12 IS 330.1.
13 THE COURT: ALL RIGHT. I'VE GOT 330 HERE. THAT WAS
14 16. NO. I JUST GOT 330. IT SAYS ROPER PROPOSAL.
15 MR. PIUZE: IT DOES.
16 THE COURT: OKAY.
17 Q. BY MR. PIUZE: DO YOU REMEMBER THAT ONE?
18 A. I DO.
19 THE COURT: WE HAD THAT MARKED AS 16 FOR
20 IDENTIFICATION.
21 MR. PIUZE: OKAY. IS THAT WHAT I SHOULD SAY, 16?
22 THE COURT: WE'RE GOING TO HAVE TO, UNLESS WE HAVE A
23 CHART AND WE CAN WORK IT OUT. OTHERWISE --
24 LADIES AND GENTLEMEN, LET ME JUST EXPLAIN
25 WHAT'S GOING ON. THIS IS MY PROBLEM AND MR. SABALBURO'S
26 PROBLEM. IT'S NOT THE ATTORNEYS. THEY'RE NOT DOING ANYTHING
27 WRONG.
28 WHEN YOU HAVE A CASE THERE'S LOTS AND LOTS AND
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5967
1 LOTS OF DOCUMENTS, YOU'LL HAVE SEVERAL THOUSAND DOCUMENTS.
2 SO THE ATTORNEYS, AS THEY GO ALONG, MARK ALL THE DOCUMENTS IN
3 ORDER, OR THEY CALL IT -- SOMETIMES, THEY CALL THEM BATES
4 STAMP NUMBERS, BUT THEY HAVE SPECIFIC NUMBERS FOR THEM.
5 THE PROBLEM IS THAT -- I DON'T KNOW HOW MANY
6 DOCUMENTS THEY HAD IN THIS CASE, SO I'M JUST GOING TO PULL
7 NUMBERS OUT OF THE AIR. LET'S SAY, YOU HAD 10,000 AND 2,000

8 ARE GOING TO GO INTO EVIDENCE. FOR MR. SABALBURO AND I TO
9 KEEP TRACK OF SOMETHING QUICKLY TO MAKE SURE THAT THAT
10 SOMETHING IS GOING IN EVIDENCE, OR HAS ALREADY BEEN MARKED,
11 WE NEED A FAST WAY TO FIND IT, AND IF YOU HAVE TO DEAL WITH
12 2000 PAGES OF SOMETHING AND GO RUNNING THROUGH IT -- AND SAY
13 NO. 100 -- 1,212 HAS BEEN MARKED. IT'S VERY CUMBERSOME, AND
14 IT TAKES A LONG TIME.

15 IF YOU'VE GOT 10,000 OF THOSE DOCUMENTS AND YOU
16 NEED TO GO THROUGH IT, OR 10,000 NUMBERS, YOU CAN'T DO IT
17 QUICKLY. SO IT EITHER MEANS FOR THE COUNSEL TO GET TOGETHER,
18 WHICH IS A HORRENDOUS JOB, AND TRY TO DECIDE WHAT THEY'RE
19 GOING TO USE AT TRIAL, AND THEN CULL THOSE NUMBERS OUT AND
20 PUT THEM IN ORDER, OR IT MEANS NUMBERING THEM QUICKLY SO
21 THAT, AS WE GO ALONG, SO THAT MR. SABALBURO AND I CAN KEEP
22 TRACK OF THEM. OTHERWISE, YOU JUST CAN'T KEEP TRACK OF THEN.

23 SO THE ATTORNEYS ARE DOING WHAT THEY NEED TO
24 DO. THEY'RE ALSO GOING ALONG WITH ME FOR CHANGING THEIR
25 NUMBERING SYSTEM, SO MR. SABALBURO AND I CAN KEEP TRACK OF
26 THE STUFF IN A HURRY. BUT DON'T GET UPSET WITH THE ATTORNEYS
27 IF THEY HAVE DIFFERENT THAN ME, OKAY. THEY'RE JUST GOING
28 ALONG WITH MY WAY OF DOING THINGS.

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1 WHAT'S THE MATTER?

2 MS. WILKINSON: I WAS JUST WONDERING, IS MY CLOCK
3 TICKING OR IS MR. PIUZE'S CLOCK TICKING?

4 THE COURT: IT'S MR. PIUZE'S CLOCK, NOT YOURS.

5 I WAS GOOD AT THAT, BUT YOU'RE RIGHT TO ASK
6 BECAUSE I MAKE MISTAKES.

7 MR. PIUZE, I'LL GIVE YOU A MINUTE OFF FOR THAT
8 LITTLE SPIEL TO THE JURY.

9 MR. PIUZE: YOUR HONOR, I ENJOY HEARING YOU SO MUCH,
10 I DIDN'T EVEN COMPLAIN.

11 THE COURT: I KNOW YOU DIDN'T. BUT I'LL STILL TAKE A
12 MINUTE OFF.

13 MR. PIUZE: OKAY. THANKS A LOT.

14 Q. LOOK. CAN YOU ALL SEE THIS DOWN HERE, EVERYONE
15 DOWN AT THE END?

16 DID THESE GUYS, THE TOBACCO INSTITUTE, TOBACCO
17 INDUSTRY RESEARCH COUNCIL, TOBACCO RESEARCH COMMITTEE, DID
18 THEY HINDER YOUR EFFORTS AS A PUBLIC HEALTH OFFICIAL TO GET
19 PEOPLE TO STOP SMOKING?

20 MS. WILKINSON: ASKED AND ANSWERED.

21 THE COURT: OVERRULED.

22 THE WITNESS: ABSOLUTELY.

23 Q. BY MR. PIUZE: HERE'S A -- FRUSTRATING?

24 A. VERY.

25 Q. AT THE BEGINNING OF YOUR CROSS-EXAMINATION, I
26 BELIEVE, THAT IT WAS BROUGHT OUT THAT YOU HAD TESTIFIED IN
27 THIS PAST YEAR DOWN IN LOUISIANA IN A CASE CALLED SCOTT.

28 DO YOU REMEMBER THAT?

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1 A. THAT'S CORRECT.

2 THE COURT: I NEED YOU TO KEEP YOUR VOICE UP,
3 MR. PIUZE.

4 MR. PIUZE: I WILL.

5 THE COURT: THANK YOU.

6 Q. BY MR. PIUZE: CLASS ACTION CASE?

7 A. YES, IT IS.

8 Q. MEDICAL MONITORING CASE?

9 A. YES, IT IS.

10 Q. FOR WHAT PURPOSE?

11 A. IT IS --
12 MS. WILKINSON: OBJECTION, YOUR HONOR. RELEVANCE.
13 PURPOSE OF. HE WASN'T ASKED ABOUT THE SUBJECT MATTER OF THE
14 CASE.
15 THE COURT: WHY DON'T -- ONCE YOU OPEN
16 THE -- OVERRULED.
17 THE WITNESS: IT WAS A CLASS ACTION TO OBTAIN
18 CESSATION ASSISTANCE AND MONITORING TO PICK UP
19 TOBACCO-RELATED DISEASES EARLY FOR THE SMOKERS IN LOUISIANA.
20 Q. BY MR. PIUZE: INVOLVE THE SAME TYPE OF CASE IN
21 WEST VIRGINIA?
22 A. YES, I WAS.
23 Q. YOU WERE ASKED ABOUT BEING INVOLVED IN A CASE
24 IN ILLINOIS, CLASS ACTION CASE?
25 A. YES.
26 Q. LIGHT CIGARETTE CASE?
27 A. YES. IT WAS A CLASS ACTION TO RECOVER FOR THE
28 MISREPRESENTATION OF PHILIP MORRIS IN THAT INSTANCE ABOUT ITS
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5970
1 ADVERTISING PRODUCTS AS BEING LIGHT AND LOW TAR WHEN, IN
2 FACT, THEY WERE NOT.
3 THE COURT: I WANT TO CLARIFY SOMETHING. HE'S
4 TELLING YOU WHAT HE BELIEVES THE CASE IS ABOUT. IT DOES NOT
5 MEAN THAT THERE WAS ANY, AND I HAVE NO OPINION ABOUT IT AND
6 I'M NOT EXPRESSING ANY OPINION AS TO THE ACCURACY OF THE
7 STATEMENTS. HE'S MERELY TELLING YOU WHAT HIS UNDERSTANDING
8 OF THE PURPOSE OF THE CASE WAS.
9 BUT WHATEVER HAPPENED IN THOSE OTHER CASES IS
10 NOT WHAT'S HAPPENING HERE. HE'S JUST TELLING YOU WHAT THE
11 CASE WAS ABOUT BECAUSE MS. WILKINSON ASKED ABOUT THE CASE AND
12 MAY HAVE ASKED ABOUT SOME INFORMATION ABOUT THE VARIOUS CASES
13 OR DID YOU TESTIFY THIS WAY OR THAT WAY.
14 BUT SIMPLY BECAUSE HE'S SAYING THAT DOESN'T
15 MEAN THAT THE ALLEGATIONS IN THE CASES ARE TRUE OR NOT TRUE.
16 YOU ALL UNDERSTAND THAT?
17 EVERYBODY SAID YES.
18 OKAY, MR. PIUZE.
19 Q. BY MR. PIUZE: IT WAS BROUGHT OUT THAT YOU
20 TESTIFIED IN A CASE -- MAYBE NOT TESTIFIED, BUT YOU WERE
21 ASSOCIATED WITH OR GAVE A DEPOSITION IN A CASE HERE IN
22 CALIFORNIA CALLED BROWN.
23 DO YOU REMEMBER THAT?
24 A. YES.
25 Q. CLASS ACTION CASE IN CALIFORNIA?
26 A. YES, IT IS.
27 Q. SIMON IN BROOKLYN, NEW YORK, THAT'S A CLASS
28 ACTION CASE?
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1 A. YES, IT IS.
2 Q. SHOULD THE JURY GET THE UNDERSTANDING THAT
3 YOU'RE A BIG FAN, A BIG FRIEND OF THE TOBACCO INDUSTRY, WOULD
4 YOU ADMIT THAT YOU'RE NOT A BIG FRIEND OF THE TOBACCO
5 INDUSTRY?
6 A. I THINK IT WOULD BE VERY A FAIR
7 CHARACTERIZATION TO SAY THAT I'M NOT A BIG FRIEND OF THE
8 TOBACCO INDUSTRY.
9 Q. WOULD IT BE A FAIR CHARACTERIZATION TO SAY THAT
10 YOU'VE SPENT VIRTUALLY YOUR ENTIRE PROFESSIONAL LIFE TRYING
11 TO UNDO THE DAMAGE THAT YOU PERCEIVED CAUSE BY THE TOBACCO
12 INDUSTRY?
13 A. YES.

14 Q. IF THE JURY, IF THEY THOUGHT YOU WERE A BIG
15 FRIEND OR A FAN OF THE ASBESTOS INDUSTRY, WOULD THE JURY BE
16 RIGHT IN THAT?

17 A. NO. THEY WOULD BE WRONG IN THAT.

18 Q. WHEN YOU HAVE BEEN INVOLVED IN ASBESTOS
19 LITIGATIONS, HAVE YOU TESTIFIED EXCLUSIVELY ON THE SIDE OF
20 ASBESTOS COMPANIES?

21 A. NO, I HAVE NOT.

22 Q. ASBESTOS INSURERS?

23 A. NO, I HAVE NOT.

24 Q. VICTIMS OF ASBESTOS?

25 A. NO. I'VE TESTIFIED ON BOTH SIDES.

26 Q. BOTH SIDES?

27 A. BOTH SIDES.

28 Q. AND AFTER HEARING ABOUT ALL THIS, HOW MANY
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1 TIMES HAVE YOU ACTUALLY TESTIFIED IN A TRIAL ON BEHALF OF
2 ASBESTOS INTERESTS?

3 IN OTHER WORDS, THEIR INSURERS OR THE ASBESTOS
4 COMPANIES THEMSELVES?

5 A. I THINK IT'S A TOTAL OF THREE.

6 Q. OVER HOW MANY YEARS?

7 A. OVER 15 YEARS.

8 Q. OKAY. NOW, AS PART OF YOUR WORK WITH THE
9 SURGEON GENERAL IN 1985, DID YOU GET INVOLVED ON AN ISSUE
10 HAVING TO DO WITH SMOKING IN THE WORKPLACE?

11 A. YES. THAT WAS THE TITLE OF THE 1985 REPORT.

12 Q. WHAT WAS YOUR FUNCTION AS FAR AS SMOKING IN THE
13 WORKPLACE WAS CONCERNED?

14 MS. WILKINSON: OBJECTION. BEYOND THE SCOPE.

15 THE COURT: ARE YOU GOING TO REOPEN?

16 I THINK IT'S BEYOND THE SCOPE. ARE YOU ASKING
17 TO REOPEN BRIEFLY FOR THIS LIMITED AREA?

18 MR. PIUZE: ACTUALLY NOT, YOUR HONOR. I DON'T THINK
19 IT IS. LET ME COME ABOUT IT AT A DIFFERENT WAY. I'LL
20 WITHDRAW THAT QUESTION.

21 THE COURT: OKAY.

22 MR. PIUZE: THANKS.

23 Q. DO YOU HAVE KNOWLEDGE AND BACKGROUND AND
24 EXPERIENCE HAVING TO DO WITH HOW EXPOSURES TO ASBESTOS IN THE
25 WORKPLACE INTERRELATE WITH EXPOSURES TO TOBACCO SMOKE THAT
26 SMOKERS SMOKE?

27 A. YES.

28 Q. IN THIS CASE, I GUESS, YOU MUST BE AWARE THAT
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1 MR. RELLER WAS A HEAVY SMOKER?

2 A. YES.

3 Q. IN THIS CASE, I GUESS YOU MUST BE AWARE THAT
4 PHILIP MORRIS CLAIMS THAT HE WAS EXPOSED TO VARIOUS ASBESTOS?

5 A. THAT'S MY UNDERSTANDING.

6 Q. SO IN THIS CASE, YOU'RE AWARE, I GUESS, THAT
7 THERE'S A CLAIM THAT THERE'S AN INTERRELATIONSHIP BETWEEN
8 SMOKING AND ASBESTOS?

9 A. THAT'S CORRECT.

10 Q. OKAY. NOW, I WANT TO ASK YOU SOME QUESTIONS
11 ABOUT THAT. BUT BEFORE I DO, I WANT TO ESTABLISH YOUR
12 CREDENTIALS FOR SAYING IT. OKAY?

13 A. OKAY.

14 Q. IN THE 1985 SURGEON GENERAL'S REPORT ON SMOKING
15 IN THE WORKPLACE, DID YOU DEAL WITH THE INTERRELATIONSHIP
16 BETWEEN SMOKING CIGARETTES AND HAVING SOME EXPOSURE TO

17 ASBESTOS IN THE WORKPLACE?
18 A. YES.
19 Q. WHAT EXACTLY DID YOU DO BEFORE WRITING UP
20 THAT -- DID YOU WRITE IT?
21 A. I WROTE THAT CHAPTER AND I EDITED THE VOLUME.
22 Q. SO DO YOU WANT TO MAKE SOME OPINIONS ABOUT THE
23 INTERRELATIONSHIP?
24 THE COURT: I DON'T CARE IF HE WANTS TO MAKE THEM.
25 IT'S NOT RELEVANT.
26 Q. BY MR. PIUZE: DO HAVE YOU AN OPINION?
27 WITHDRAW THAT QUESTION, TOO. BAD QUESTION.
28 THE COURT: YOU'RE RIGHT.
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5974

1 MR. PIUZE: I KNOW. EXCELLENT RULING.
2 THE COURT: AS I SAID, THEY ALL ARE.
3 Q. BY MR. PIUZE: HERE'S WHAT I WANT TO KNOW.
4 A. OKAY.
5 Q. CAN YOU TELL THE JURY AN OPINION ABOUT THE
6 INTERRELATIONSHIP BETWEEN MR. RELLER SMOKING AS A CAUSE OF
7 HIS DISEASE AND ASBESTOS EXPOSURE AS A CAUSE OF HIS DISEASE?
8 A. YES, I CAN.
9 Q. FIRST OF ALL, DO YOU KNOW WHAT A DOSE RESPONSE
10 IS?
11 A. YES, I DO.
12 Q. IS THAT THE PROPER TERM?
13 A. YES, IT IS.
14 Q. WHAT IS A DOSE RESPONSE?
15 A. A DOSE RESPONSE IS A METHOD OF LOOKING AT AN
16 EFFECT WHERE, WITH INCREASING AMOUNTS OF EXPOSURE OR
17 APPLICATION, YOU GET A BIGGER EFFECT. SO THE EFFECT KEEPS
18 INCREASING WITH THE INCREASING AMOUNT OF THE EXPOSURE.
19 Q. MORE EXPOSURE, THE GREATER CHANCE OF DISEASE?
20 A. THAT'S CORRECT.
21 Q. IS THAT TRUE OF ASBESTOS?
22 A. YES, IT IS.
23 Q. IS THAT TRUE OF TOBACCO?
24 A. YES, IT IS.
25 Q. LET'S JUST TALK ABOUT TOBACCO FOR A SECOND.
26 HOW GOOD ARE YOU AT MATH?
27 A. I CAN ADD AND SUBTRACT.
28 THE COURT: HERE'S A CALCULATOR.
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1 THE WITNESS: OCCASIONALLY MULTIPLY.
2 THE COURT: HERE'S A CALCULATOR IF YOU NEED IT.
3 Q. BY MR. PIUZE: I HOPE YOU'RE NOT GOING TO NEED
4 IT. IT'S GOING TO TAKE JUST A MULTIPLICATION.
5 OKAY. ARE YOU READY?
6 A. YES.
7 Q. LET'S MAKE THE FOLLOWING ASSUMPTIONS HERE.
8 YOU'VE ALREADY TESTIFIED THIS MORNING -- THAT
9 ONE'S EASY -- IF MR. RELLER STARTED SMOKING PALL MALLS, A
10 PACK A DAY IN 1958 --
11 MS. WILKINSON: '57. WHEN HE TURNED 18.
12 MR. PIUZE: 1957 WHEN HE TURNED 18.
13 WHAT MONTH WAS THAT?
14 MS. WILKINSON: JANUARY.
15 Q. BY MR. PIUZE: -- 1957, '8, '9, '60, '61 -- I
16 HAVE TO DO THIS ON TWO HANDS -- '62, '63, SURGEON GENERAL'S
17 REPORT CAME OUT IN JANUARY OF 1964.
18 SO SEVEN FINGERS?
19 A. THAT'S CORRECT.

20 Q. IF HE WAS SMOKING A PACK A DAY, SEVEN-PACK
21 YEARS?
22 A. THAT'S CORRECT.
23 Q. OKAY. SURGEON GENERAL'S REPORT COMES OUT
24 JANUARY 1964. JUST ASSUME THAT THE TESTIMONY HERE WILL BE
25 THAT MR. RELLER SAW THAT, AND ONE OF HIS REACTIONS WAS TO
26 SWITCH TO FILTER CIGARETTES, MARLBOROS, WHICH HE THEN SMOKED
27 FOR ROUGHLY EIGHT YEARS, SWITCHED TO BENSON & HEDGES, WHICH
28 HE SMOKED UNTIL NOVEMBER OF 2000. OKAY?

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1 A. UH-HUH.
2 Q. YES?
3 A. YES.
4 THE COURT: UH-HUH IS YES?
5 THE WITNESS: YES. I'M SORRY.
6 Q. BY MR. PIUZE: AND WE KNOW, EVERYONE KNOWS, BUT
7 CONFIRM, MARLBORO, BENSON & HEDGES, BOTH MADE BY
8 PHILIP MORRIS?

9 A. YES.
10 Q. SO 1964 ALL THE WAY TO THE YEAR 2000?
11 A. 36 YEARS.
12 Q. 36 YEARS. AND JUST ASSUME THAT OVER THE COURSE
13 OF THAT TIME HIS SMOKING WENT FROM ABOUT A PACK DAY UP TO,
14 FOR THE PURPOSES OF THIS QUESTION, JUST ROUND NUMBERS, ABOUT
15 TWO PACKS A DAY. OKAY?

16 A. OKAY.
17 Q. OKAY. OVER THE COURSE OF THE YEARS, I DON'T
18 KNOW WHEN EXACTLY IT WENT TO TWO PACKS DAY, BUT OVER THE
19 COURSE OF YEARS, LET'S JUST SPLIT IT FOR THE PURPOSE OF THIS
20 QUESTION AND SAY, ONE AND A HALF PACKS A DAY, AVERAGE, OVER
21 THAT TIME. OKAY?

22 A. YES.
23 Q. SO HERE'S YOUR MATH QUESTION. 36 YEARS TIMES
24 ONE AND A HALF IS WHAT?
25 A. 36 TIMES ONE AND A HALF, I THINK, IS 54.
26 Q. RIGHT. OKAY. SO THE PERCENTAGE OF PALL MALLS
27 THAT MR. RELLER SMOKED, SEVEN --

28 A. YES.
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5977

1 Q. -- IS SEVEN SIXTY-FIRSTS?
2 A. THAT'S CORRECT.
3 Q. 54, PHILIP MORRIS, PLUS SEVEN EQUALS 61?
4 A. THAT'S CORRECT.
5 Q. SO THE PERCENTAGE OF NON-PHILIP MORRIS
6 CIGARETTES HE SMOKED IS SEVEN SIXTY-FIRSTS, RIGHT?
7 A. THAT'S CORRECT.
8 Q. AND THE PERCENTAGE OF PHILIP MORRIS CIGARETTES
9 HE SMOKED IS SIXTY-FOUR SIXTY-FIRSTS?

10 A. THAT'S ALSO CORRECT.
11 Q. SO WHAT ABOUT A DOSE RESPONSE ISSUE?
12 AS FAR AS DOSE AND RESPONSE IS CONCERNED, IF
13 YOU'RE IN THE 54 CATEGORY AS OPPOSED TO THE SEVEN CATEGORY,
14 IS THAT A BIGGER DOSE?

15 A. YES.
16 Q. THAT'S EASY.
17 A. MUCH BIGGER.
18 Q. DO YOU GET A MUCH BIGGER RESPONSE?
19 A. ABSOLUTELY. YOU GET A HUGELY BIGGER RESPONSE.
20 Q. OKAY. SO HERE'S A -- THIS IS AN EASY QUESTION
21 TO END THE MORNING. WHY?
22 A. BECAUSE THIS IS A LONG PROCESS THAT REQUIRES

23 MULTIPLE STEPS, AND YOU NEED TO HAVE THAT EXPOSURE OCCUR WITH
24 INTENSITY OVER A LONG PERIOD OF TIME.
25 THE EARLY PARTS OF THE STEPS ARE THE ONES THAT
26 I SHOWED YOU, WITH THE LONGEST ONE IS RESPONDING TO THE
27 IRRITATION AND TO THE PARALYSIS OF THE HAIR-LIKE STRUCTURES,
28 THE CILIA. THEN YOU GET SOME CHANGES IN THE CELLS THAT CAN
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1 REVERT BACK. THOSE ARE THE EARLY CHANGES. AND IF YOU STOP
2 THERE, THOSE CHANGES WILL LIKELY GO BACK.

3 BY THE TIME YOU GET TO FIVE-PACK YEARS, MAYBE,
4 WE'RE MAKING TRANSITION TO SOME KIND OF TINY LONG-TERM
5 INCREASED RISK. THAT MIGHT BE THE DIVISION, IT MIGHT NOT BE.
6 BUT THEN, BY THE TIME YOU'RE OUT TO 20, NOW, YOU'VE GOT A
7 SUBSTANTIAL INCREASED RISK.

8 BY THE TIME YOU'RE OUT TO 50, YOUR RISK IS NOW
9 20, 25, 30 TIMES THE RISK OF SOMEONE WHO'S NEVER SMOKED AND
10 CONTRAST TO THE RISK AT SEVEN-PACK YEARS, WHICH MIGHT BE
11 MAYBE 1.2 OR ONE AND A HALF TIMES THE RISK OF SOMEONE WHO
12 SMOKED.

13 SO THE DIFFERENCE THERE IS THE DIFFERENCE OF
14 30 TO A DIFFERENCE OF ONE AND A HALF, AND THE DIFFERENCE,
15 THEREFORE, IS ENORMOUS IN TERMS OF THE CONSEQUENCES FOR RISK.

16 Q. THANK YOU.

17 WHEN WE GET BACK AFTER LUNCH, IF I ASK YOU THE
18 SAME QUESTIONS NOW INSTEAD OF COMPARING PHILIP MORRIS TO
19 PALL MALL, COMPARING PHILIP MORRIS CIGARETTES TO ASBESTOS,
20 ARE YOU GOING TO BE PREPARED TO DO THAT?

21 A. SURE.

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU'RE
23 ADMONISHED THAT IT'S YOUR DUTY NOT TO CONVERSE AMONG
24 YOURSELVES OR WITH ANYONE ELSE ON ANY SUBJECT CONNECTED WITH
25 THIS TRIAL OR TO FORM OR EXPRESS ANY OPINION THEREON UNTIL
26 THE CASE IS FINALLY SUBMITTED TO YOU.

27 I'LL SEE EVERYBODY BACK HERE AT 12:00 -- I RAN
28 OVER -- I APOLOGIZE -- 16.

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1
2 (AT 11:31 A.M., A LUNCH RECESS WAS TAKEN
3 UNTIL 12:15 P.M. OF THE SAME DAY.)
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1 CASE NUMBER: BC 261796
2 CASE NAME: RELLER V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA TUESDAY, JUNE 17, 2003
4 DEPARTMENT 324 HON. VICTORIA G. CHANEY, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: LINDA BICHE, CSR NO. 3359, RMR, CRR
7 TIME: 12:15 A.M.

8
9 - - O - -

10
11 THE COURT: BACK IN THE MATTER OF RELLER VERSUS
12 PHILIP MORRIS, BC 261796.
13 THE RECORD SHOULD REFLECT THAT NOW ALL TWELVE
14 JURORS AND THE FOUR ALTERNATES ARE PRESENT.
15 NOW MR. PIUZE AND THE WITNESS ARE PRESENT.
16 MR. GARDNER, MS. WILKINSON ARE PRESENT.
17 DR. LEWIS IS PRESENT.
18 FOLKS, I AM REAL SERIOUS ABOUT TIME. IT'S
19 THREE MINUTES LATE, AND THAT'S THREE MINUTES THAT EITHER I'M
20 GOING TO HAVE TO START ADDING AT THE END OF THE DAY OR
21 EVERYBODY'S GOING TO LEARN TO BE ON TIME.
22 SIR, YOU'RE STILL UNDER OATH.
23 MR. PIUZE, THE CLOCK IS RUNNING.
24 MR. PIUZE: THANK YOU.

25
26 REDIRECT EXAMINATION (RESUMED)
27 BY MR. PIUZE:
28 Q. I WAS GOING TO ASK YOU ABOUT ASBESTOS.
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1 READY?
2 A. YES.
3 Q. IN ORDER FOR ASBESTOS TO BE A CAUSE OF DISEASE,
4 DOES THERE HAVE TO BE A SUFFICIENT EXPOSURE TO ASBESTOS TO
5 CAUSE DISEASE?
6 A. YES, THERE DOES.
7 Q. IF IN THIS ROOM, JUST TO MAKE AN EXAMPLE, IF IN
8 THIS ROOM SOMEONE BROKE THE LAW AND PUFFED ON ONE CIGARETTE
9 AND THE SMOKE FROM ONE CIGARETTE GOT INTO THE ROOM, WOULD
10 SOME OF THE PEOPLE IN HERE POTENTIALLY BE EXPOSED TO THE
11 SMOKE FROM ONE CIGARETTE?
12 A. THEY WOULD BE EXPOSED TO IT, YES.
13 Q. IS THE FACT THAT THEY'RE EXPOSED TO THAT
14 MINIMAL AMOUNT OF SMOKE GOING TO HURT ANY?
15 A. NO, THAT IS NOT GOING TO CHANGE YOUR RISK IN
16 ANY WAY THAT'S MEANINGFUL.
17 Q. WOULD THE SAME APPLY TO EXPOSURE TO ASBESTOS?
18 A. YES, IT WOULD.
19 Q. NOW, IN THE PAST, HAVE YOU BEEN INVOLVED IN,
20 EITHER -- AND I'LL ASK YOU HOW LATER -- AS A DOCTOR, AS A
21 RESEARCHER, AS A WRITER, AS A WITNESS, DIFFERENT EXPOSURES OF
22 DIFFERENT PEOPLE TO ASBESTOS?
23 A. YES.
24 Q. EXAMPLE. IS ASBESTOS FREQUENTLY FOUND IN
25 SHIPYARDS?
26 A. YES, IT IS.
27 Q. ARE THERE PEOPLE WHOSE WORK IT IS TO USE, IN
28 THE PAST, TO USE ASBESTOS TO INSULATE PIPES?

1 A. YES. IT WAS A COMMON FORM OF INSULATION IN THE
2 PAST.

3 Q. AND THE PEOPLE THAT USED ASBESTOS TO INSULATE
4 PIPES, WHAT WAS THEIR JOB TITLE?

5 A. THEY WERE ASBESTOS LAGGERS OR ASBESTOS
6 SPRAYERS. A VARIETY OF DIFFERENT JOB TITLES, THEY WOULD HAVE
7 HAD.

8 THE COURT: DO YOU NEED A SPELLING FOR THOSE?

9 MR. PIUZE: EXCUSE ME?

10 THE COURT: I ASKED HER IF SHE NEEDED A SPELLING.

11 GO ON.

12 Q. BY MR. PIUZE: IN THE PAST HAVE PEOPLE LIKE
13 THAT GOTTEN EXPOSED TO EXPOSURE?

14 A. YES.

15 Q. EIGHT HOURS A DAY?

16 A. EIGHT HOURS A DAY. PARTICULARLY THOSE WHO
17 SPRAYED ASBESTOS WOULD GET VERY HIGH LEVELS OF EXPOSURE FOR
18 THE PERIOD OF TIME THAT THEY WERE SPRAYING.

19 Q. FIVE DAYS A WEEK?

20 A. YES.

21 Q. 50 WEEKS A YEAR?

22 A. YES.

23 Q. FOR 20, 30, 40 YEARS?

24 A. THAT'S CORRECT.

25 Q. ARE THERE OTHER PEOPLE IN SHIPYARDS, CARPENTERS
26 AND OTHER WORKERS IN SHIPYARDS, WHO ARE AROUND, HAVE BEEN
27 AROUND WHERE ASBESTOS WAS SPRAYED, BUT NOT IN AS CLOSE
28 PROXIMITY?

1 A. YES.

2 Q. IS THERE A DIFFERENCE IN THE EXPOSURE THE
3 PERSON SPRAYING IT GETS THAN THE CARPENTER OR THE ELECTRICIAN
4 ON THE OTHER SIDE OF THE SHIP WHO GETS TO BREATHE SOME OF IT
5 SOME OF THE TIME?

6 A. YES. THERE ARE TWO PRINCIPAL DIFFERENCES.

7 ONE IS THE INTENSITY OF THE CONCENTRATION OF
8 ASBESTOS DUST IN THE AIR RIGHT AROUND THE INDIVIDUAL WHOSE
9 SPRAYING IS HIGHER.

10 AND THE OTHER DIFFERENCE IS THAT THE INDIVIDUAL
11 SPRAYING ASBESTOS IS ALWAYS AROUND THE ASBESTOS BEING
12 SPRAYED, WHEREAS THE CARPENTER IS ONLY HEAVILY EXPOSED FOR
13 THOSE PERIODS WHERE HE'S WORKING IN CLOSE PROXIMITY TO THE
14 INDIVIDUAL WHO'S SPRAYING THE ASBESTOS.

15 SO THERE'S A DIFFERENCE IN THE -- BOTH THE
16 INTENSITY AND THE FREQUENCY OF EXPOSURE FOR THE CARPENTER IN
17 COMPARISON TO THE MAN SPRAYING ASBESTOS.

18 Q. ON CROSS-EXAMINATION, I BELIEVE YOU WERE
19 TALKING ABOUT LOOKING AT THE OCCUPATIONAL EXPOSURE OF PEOPLE
20 TO ASBESTOS.

21 DO YOU REMEMBER THAT?

22 A. YES.

23 Q. IS THE EXAMPLE I JUST -- WELL, NOT THE ONLY
24 ONE -- IS THE EXAMPLE I JUST USED AN EXAMPLE OF OCCUPATIONAL
25 EXPOSURE?

26 A. YES, IT IS. BOTH ARE EXAMPLES OF OCCUPATIONAL
27 EXPOSURE.

1 IS TO WEAR A SUIT AND TIE AND SIT IN AN OFFICE BUILDING IN

2 BEVERLY HILLS FOR 20 YEARS, AND DURING THE COURSE OF THAT
3 20 YEARS, MAYBE FOR A COUPLE OF WEEKS OR EVEN A COUPLE OF
4 MONTHS OVER THE COURSE OF 20 YEARS, SOMEPLACE IN THE BUILDING
5 THERE'S SOME ASBESTOS ABATEMENT GOING ON.

6 IS THAT AN EXAMPLE OF OCCUPATIONAL EXPOSURE,
7 ALSO?

8 MS. WILKINSON: OBJECTION. FOUNDATION.

9 THE COURT: OVERRULED.

10 THE WITNESS: NO. THAT IS NOT WHAT WE WOULD CLASSIFY
11 AS AN OCCUPATIONAL EXPOSURE.

12 AN OCCUPATIONAL EXPOSURE REFERS TO YOUR
13 OCCUPATION BEING RELATED TO WORKING WITH ASBESTOS, AS OPPOSED
14 TO THE FACT THAT DURING THE TIME THAT YOU WERE EMPLOYED, YOU
15 MIGHT HAVE ONCE WALKED THROUGH A BUILDING THAT HAD SOME
16 ASBESTOS IN IT, OR THERE WAS SOME ASBESTOS ABATEMENT GOING ON
17 IN THE BUILDING IN WHICH YOU WERE IN.

18 THAT WOULD NOT BE CONSIDERED OCCUPATIONAL
19 ASBESTOS EXPOSURE.

20 Q. WHAT WOULD YOU CALL THAT?

21 A. INCIDENTAL ASBESTOS EXPOSURE. IT OCCURS AS
22 PART OF THE SORT OF INCIDENTAL ACTIVITIES OF YOUR DAILY LIFE,
23 ONE OF WHICH INCLUDES GOING TO WORK.

24 SO IT COULD HAVE HAPPENED AT YOUR WORKPLACE.
25 IT COULD HAVE HAPPENED WHEN YOU WENT TO SIT IN A CLASSROOM.
26 OR IT COULD HAVE HAPPENED IN ANY OTHER INCIDENTAL ACTIVITY OF
27 YOUR DAILY LIFE IF THIS KIND OF REMOVAL OF ASBESTOS WAS GOING
28 ON.

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1 Q. JUST SO YOU DON'T GET ME WRONG, AND NO ONE ELSE
2 DOES, I'M NOT SAYING MR. RELLER WAS IN THE BUILDING FOR ONE
3 DAY AND THERE WAS SOMETHING GOING ON.

4 I'M SAYING, WHAT IF A PERSON IS IN AN OFFICE
5 BUILDING OVER A COURSE OF 20 YEARS, AND OVER THE COURSE OF
6 20 YEARS THERE'S BEEN SOME ASBESTOS ABATEMENT GOING ON,
7 EITHER FOR A PERIOD OF WEEKS OR MONTHS, AND IS THAT AN
8 OCCUPATIONAL EXPOSURE?

9 A. NO, IT IS NOT.

10 Q. STILL INCIDENTAL EXPOSURE?

11 A. STILL INCIDENTAL EXPOSURE. PERHAPS IT WOULD
12 HELP TO CLARIFY THAT.

13 THE TYPE OF EXPOSURE YOU GET WHEN YOU SPRAY
14 ASBESTOS IS, YOU CAN'T SEE FROM ME TO YOU BECAUSE OF THE
15 DUST, THE AMOUNT OF DUST IN THE AIR THAT IS ASBESTOS DUST.

16 YOU CAN'T RELATE THAT INTENSITY OF EXPOSURE FOR
17 EVERY WORKING DAY OR MOST WORKING DAYS FOR 20 YEARS TO
18 SOMEONE WHO WALKS DOWN A CORRIDOR WHERE THERE MIGHT BE A FEW
19 PARTICLES OF ASBESTOS DUST IN THE AIR BECAUSE THEY WERE
20 KNOCKED OFF AIR-CONDITIONING VENTS WHEN THE ASBESTOS
21 INSULATION WAS BEING REMOVED.

22 THOSE TWO INTENSITIES OF EXPOSURE ARE ORDERS OF
23 MAGNITUDE, TREMENDOUSLY DIFFERENT IN INTENSITY AND IN
24 CONSEQUENCE.

25 Q. THE MORE EXPOSURE, THE MORE THE CHANCE OF
26 DISEASE?

27 A. THAT'S CORRECT.

28 Q. NOW, WHILE I'M ON THAT SUBJECT.

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1 MESOTHELIOMA, I GUESS WE HEARD, I THINK WE'VE
2 HEARD, THAT'S NOT REALLY LUNG CANCER, RIGHT?

3 A. THAT'S CORRECT. IT'S A CANCER OF THE TISSUE
4 SURROUNDING THE LUNG.

5 Q. IS THE DOSE RESPONSE TO ASBESTOS DIFFERENT FOR
6 MESOTHELIOMA THAN FOR LUNG CANCER?

7 A. YES. IT'S FUNDAMENTALLY DIFFERENT.

8 Q. EXPLAIN, PLEASE.

9 A. ONE OF THE CHARACTERISTICS OF MESOTHELIOMA IS
10 IT HAS WHAT'S CALLED VERNES (PHONETIC) DOSE RESPONSE CURVE.
11 VERY LOW LEVELS OF EXPOSURE THAT OCCUR FOR SHORT PERIODS OF
12 TIME CAN SUBSEQUENTLY CAUSE MESOTHELIOMA. AND, THEREFORE, WE
13 ARE QUITE WORRIED ABOUT SMALL LEVELS OF EXPOSURE TO ASBESTOS
14 BECAUSE OF ITS CAPABILITY OF CAUSING SMALL NUMBERS OF
15 MESOTHELIOMA, BUT VERY REAL NUMBERS, PARTICULARLY FOR THE
16 PEOPLE WHO GET IT.

17 IN CONTRAST, FOR LUNG CANCER, IF YOU ARE VERY
18 HEAVILY EXPOSED, THE PERSON THAT I TALKED TO YOU ABOUT, ABOUT
19 SPRAYING ASBESTOS, YOU MIGHT HAVE A FIVEFOLD INCREASED RISK.

20 IF, ON THE OTHER HAND, YOU WORK IN A MORE
21 NORMAL KIND OF ENVIRONMENT, IF YOU'RE WORKING NEXT TO THE GUY
22 WHO'S SPRAYING, YOU'RE A PLUMBER OR YOU'RE A PIPEFITTER, YOUR
23 RISK MIGHT BE ONE AND A HALF OR TWOFOLD INCREASED.

24 IF YOU TAKE A GROUP, FOR EXAMPLE, OF PEOPLE WHO
25 WORK IN THE PETROCHEMICAL INDUSTRY AS A WHOLE GROUP, YOU
26 DON'T SEE ANY INCREASE IN THE ENTIRE GROUP FROM THAT LEVEL OF
27 EXPOSURE, EVEN THOUGH SOME INDIVIDUALS WITHIN THAT WORK FORCE
28 HAVE HAD HIGH LEVELS OF EXPOSURE AND DEVELOP VERY SEVERE
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1 DISEASE FROM THAT EXPOSURE.

2 SO THERE'S GRAY DAYS, AND THAT'S PARTICULARLY
3 TRUE FOR LUNG CANCER, BECAUSE AS YOU GET BELOW THESE INTENSE
4 OCCUPATIONAL EXPOSURES THAT DAMAGE THE LUNG THAT SHOW UP AS
5 THICKENING OF THE PLEURA, AS A PLEURAL PLAQUE, A SAUCER-LIKE
6 GROWTH ON THE PLEURA, OR AS SCARRING AND FIBROSIS OF THE LUNG
7 IN A VERY CHARACTERISTIC PATTERN CALLED ASBESTOSIS, IF YOU
8 GET BELOW THE LEVEL OF EXPOSURE THAT CAUSES THAT KIND OF
9 DAMAGE, YOU CAN'T DEMONSTRATE -- YOU CAN'T FIND AN INCREASED
10 RISK OF LUNG CANCER.

11 SO IT TAKES A SUBSTANTIAL EXPOSURE IN ORDER TO
12 CREATE THIS INCREASED RISK. BUT YOU SHOULDN'T BE CONFUSED
13 THAT THAT INCREASED RISK IS, INDEED, REAL, IF THE EXPOSURE IS
14 HIGHER.

15 Q. OKAY. RELATIVELY SMALL AMOUNT OF EXPOSURE CAN
16 GET YOU MESOTHELIOMA, BUT RELATIVELY SMALL AMOUNT OF EXPOSURE
17 CANNOT GET YOU LUNG CANCER?

18 A. IT DOES NOT CREATE A MEANINGFUL INCREASE IN
19 YOUR RISK OF LUNG CANCER, JUST AS ONE CIGARETTE IN THE ROOM
20 WOULD NOT CREATE A MEANINGFUL INCREASE IN YOUR RISK OF
21 DEVELOPING LUNG CANCER FROM SMOKING.

22 Q. NOW, MR. RELLER DOES NOT HAVE MESOTHELIOMA?

23 A. THAT'S CORRECT.

24 Q. MR. RELLER HAS LUNG CANCER?

25 A. HE HAS LUNG CANCER.

26 Q. DID MR. RELLER -- LET'S JUST ASSUME NO
27 SHIPYARDS, NO REFINERIES, NO FACTORIES, NOTHING. OFFICE
28 BUILDINGS. OKAY?
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1 A. YES.

2 Q. VERY SMALL RISK OF EXPOSURE TO ASBESTOS UNDER
3 THOSE CIRCUMSTANCES?

4 MS. WILKINSON: OBJECTION TO FOUNDATION. HE DOESN'T
5 KNOW MR. RELLER'S EXPOSURE. HE TOLD ME THAT.

6 THE COURT: DO YOU WANT TO ASK IT AS A HYPOTHETICAL
7 INSTEAD OF THE WAY YOU'RE ASKING IT, PLEASE.

8 MR. PIUZE: YEAH. I WILL. THANK YOU.
9 THE COURT: THE OBJECTION IS SUSTAINED.
10 Q. BY MR. PIUZE: A BUSINESSPERSON WHO WORKS IN AN
11 OFFICE IN LOS ANGELES AND HAS NEVER WORKED IN A SHIPYARD,
12 NEVER WORKED IN A REFINERY, NEVER WORKED IN ANY KIND OF HEAVY
13 INDUSTRIAL BACKGROUND, BUT SOMEONE WHO WORKS IN REGULAR
14 OFFICE BUILDINGS AS A REGULAR OFFICE WORKER, DOES THAT
15 REGULAR OFFICE WORKER HAVE A HIGH, MEDIUM, LOW, REALLY LOW,
16 SUPER LOW EXPOSURE TO ASBESTOS?
17 A. IT IS A SUPER LOW EXPOSURE TO ASBESTOS. THERE
18 IS A TINY AMOUNT THAT OCCURS AS PART OF WORKING AND LIVING IN
19 AN URBAN ENVIRONMENT, BUT THAT LEVEL IS NOT ASSOCIATED WITH
20 AN INCREASED RISK OF LUNG CANCER.
21 Q. OKAY. THANK YOU.
22 ASSUME IF YOU WOULD, JUST FOR A MINUTE, THAT
23 MR. RELLER IS ROUGHLY, IN ROUND NUMBERS, A 60 -- 6-0 --
24 60-PACK-YEAR SMOKER.
25 A. YES.
26 Q. AND ALSO ASSUME THAT MR. RELLER DIDN'T WORK IN
27 ANY OF THOSE INDUSTRIAL APPLICATIONS THAT WE'VE BEEN TALKING
28 ABOUT, THAT HE'S BEEN A SUIT AND TIE GUY ALL OF HIS LIFE AS A
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5989
1 SALESPERSON WORKING IN AN OFFICE BUILDINGS.
2 CAN YOU ASSUME THOSE TWO THINGS?
3 A. YES.
4 Q. AND LAST, ASSUME THAT HE'S GOT LUNG CANCER.
5 FOR A REASONABLE DEGREE OF MEDICAL PROBABILITY,
6 WHAT CAUSED THE LUNG CANCER?
7 A. TO A REASONABLE DEGREE OF MEDICAL PROBABILITY,
8 THE LUNG CANCER WOULD HAVE BEEN CAUSED BY THE CIGARETTE
9 SMOKING. YOU HAVE A KNOWN EXPOSURE OF SUFFICIENT INTENSITY
10 AND DURATION TO CAUSE LUNG CANCER, AND YOU HAVE NO OTHER
11 DEMONSTRABLE EXPOSURE.
12 Q. I BELIEVE YOU ALSO SAID ON CROSS-EXAMINATION
13 THAT IN ADDITION TO LOOKING AT THE OCCUPATIONAL EXPOSURE, YOU
14 LOOKED AT -- OR LOOK AT, GENERALLY, MEDICAL RECORDS TO SEE IF
15 THERE'S SOME EVIDENCE IN THE MEDICAL RECORDS OF ASBESTOS
16 DISEASE.
17 DO YOU RECALL THAT?
18 A. YES.
19 Q. DID YOU DO THAT HERE?
20 A. YES, I DID.
21 Q. HOW?
22 A. BY LOOKING AT THE DETAILED DESCRIPTION OF THE
23 PATHOLOGY OF THE LUNG AND THE DESCRIPTION OF THE X-RAYS. BUT
24 THE PATHOLOGY OF THE LUNG THAT WAS AVAILABLE AFTER IT HAD
25 BEEN REMOVED AND EXAMINED UNDER THE MICROSCOPE, BY EXAMINING
26 THAT DETAILED DESCRIPTION, YOU SEE WHAT THEY DESCRIBE AS THE
27 AMOUNT OF INTERSTITIAL FIBROSIS CONSISTENT WITH THE PATTERN
28 OF ASBESTOS, WHETHER THEY FOUND ASBESTOS BODIES, LITTLE
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5990
1 FRAGMENTS OF ASBESTOS WITHIN THE LUNG, AND WHETHER THERE WERE
2 PLEURAL PLAQUES IN THAT THE INDIVIDUAL.
3 Q. THANKS.
4 NOW, BASED ON LOOKING AT THE MEDICAL RECORDS,
5 DOES THAT CHANGE YOUR OPINION THAT MR. RELLER'S SMOKING
6 CAUSED LUNG CANCER, THAT THE ASBESTOS DIDN'T CAUSE LUNG
7 CANCER?
8 A. IT DOES NOT CHANGE MY OPINION AT ALL.
9 HE HAS AMPLE EVIDENCE THAT CIGARETTES CAUSED
10 HIS LUNG CANCER AND NO EVIDENCE THAT HE WAS EXPOSED TO A

11 SUFFICIENT AMOUNT OF ASBESTOS.
12 Q. AND I THINK, LAST -- I HOPE LAST IN THIS LITTLE
13 AREA.
14 REMEMBER WAY BACK AT THE BEGINNING OF DIRECT
15 LAST THURSDAY MORNING, YOU DID SEE -- OR DO YOU RECALL SEEING
16 THE TWO AFFIDAVITS WRITTEN FOR THE TOBACCO COMPANIES HERE
17 ABOUT WHAT WAS WRONG WITH MR. RELLER?
18 A. YES, I DID.
19 Q. LUNG CANCER OR MESOTHELIOMA?
20 A. LUNG CANCER.
21 Q. ADENOCARCINOMA?
22 A. ADENOCARCINOMA.
23 Q. NO EVIDENCE OF ASBESTOS?
24 A. THAT'S CORRECT. NO EVIDENCE OF ASBESTOS.
25 Q. SO I THINK -- THANK YOU VERY MUCH. THAT CLOSES
26 THAT OUT AND IT TAKES ME TO A NEW AREA NOW.
27 YOU, I GUESS, ADMITTED ON CROSS-EXAMINATION
28 LAST WEEK THAT YOU WOULD NOT HAVE BEEN ELIGIBLE TO BE A
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1 SCIENTIFIC ADVISOR; ONLY THE SURGEON GENERAL'S COMMITTEE THAT
2 ISSUED A REPORT IN '64.
3 DO YOU RECALL THAT?
4 A. I DO.
5 Q. FIRST OF ALL, WERE YOU EVEN A DOCTOR BACK THEN?
6 A. NO. I WAS IN GRAMMAR SCHOOL.
7 Q. IF YOU WERE WHERE YOU ARE NOW, MATURE ADULT
8 DOCTOR, WITH YOUR BACKGROUND AND EXPERIENCE, THE POINT BEING
9 MADE, I GUESS, WAS, YOU WEREN'T ELIGIBLE TO BE ON THE SURGEON
10 GENERAL'S ADVISORY COMMITTEE IN THE EARLY '60S THAT LED TO
11 THE SURGEON GENERAL'S REPORT.
12 DO YOU REMEMBER THAT?
13 A. THAT'S CORRECT.
14 Q. DO YOU AGREE WITH THAT?
15 A. I DO. I HAVE CLEAR AND WELL EXPRESSED IN
16 WRITING OPINIONS ON THE RELATIONSHIP BETWEEN SMOKING AND
17 DISEASE.
18 Q. IS IT CORRECT THAT THE MERE FACT THAT YOU WERE
19 A SCIENTIST IN THE TOBACCO AND HEALTH FIELD DISQUALIFIED YOU
20 FROM BEING APPOINTED TO THE COMMITTEE?
21 A. IT WOULD HAVE, YES.
22 MR. PIUZE: LET ME SHOW YOU, PLEASE, OUR NO. 12020.
23 THE COURT: ONE MINUTE HERE. THAT WAS --
24 MR. PIUZE: THIS, YOUR HONOR --
25 THE COURT: WE'VE MARKED IT BEFORE. OH, YEAH. WE
26 JUST MARKED IT.
27 FINE. ACTUALLY, THAT NEEDS TO BE -- ELMER,
28 THAT'S -- WE HAVEN'T REALLY MARKED THAT AS A REGULAR NUMBERED
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5992
1 EXHIBIT, HAVE WE?
2 THE CLERK: NO, YOUR HONOR.
3 THE COURT: ALL RIGHT. WE'RE GOING TO CALL THAT
4 NO. 30, AND THAT IS NO. 12020, AND HELP ME AGAIN WITH THE
5 NAME.
6 I'M SORRY, MR. PIUZE.
7 MR. PIUZE: DEVELOPMENT OF KNOWLEDGE ABOUT THE
8 EFFECTS OF SMOKING.
9 THE COURT: THANK YOU.
10 30 FOR IDENTIFICATION.
11
12 (I.D. 30 - CHART.)
13

14 Q. BY MR. PIUZE: TAKE A LOOK AT THAT. I'M GOING
15 TO TURN IT TOWARD THE JURY IN A MINUTE HERE.
16 GOT IT?
17 A. OKAY. I'VE GOT IT.
18 Q. IN ADDITION TO YOU, WOULD RICHARD DOLL HAVE
19 BEEN DISQUALIFIED AS A MEMBER OF THE ADVISORY PANEL TO THE
20 SURGEON GENERAL IN THE EARLY '60S?
21 A. YES, HE WOULD HAVE.
22 Q. WOULD DR. HILL HAVE BEEN DISQUALIFIED AS A
23 MEMBER OF THE SURGEON GENERAL'S ADVISORY PANEL?
24 A. YES, HE WOULD HAVE.
25 Q. IN AMERICA, WOULD DR. WYNDER HAVE BEEN
26 DISQUALIFIED AS A MEMBER OF THE SURGEON GENERAL'S ADVISORY
27 PANEL?
28 A. YES, HE WOULD HAVE.
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1 Q. DR. GRAHAM, WOULD HE HAVE BEEN DISQUALIFIED?
2 A. YES.
3 Q. THE JAPANESE SCIENTISTS AND DANISH SCIENTISTS
4 AND THE FRENCH SCIENTISTS WHO WERE UP HERE ON THIS CHART,
5 WOULD THEY HAVE BEEN DISQUALIFIED AS MEMBERS OF THE SURGEON
6 GENERAL'S ADVISORY COMMITTEE?
7 A. YES, THEY WOULD.
8 Q. WOULD THE U.S. PUBLIC HEALTH SERVICE HAVE BEEN
9 DISQUALIFIED FROM THE SURGEON GENERAL'S ADVISORY PANEL?
10 A. THOSE INDIVIDUALS HEADING THE U.S. PUBLIC
11 HEALTH SERVICE WOULD HAVE BEEN DISQUALIFIED, YES.
12 Q. AND THE HEAD OF THE U.S. PUBLIC HEALTH SERVICE
13 IS?
14 A. THE SURGEON GENERAL.
15 Q. IN 19- -- REMEMBER YOU WERE ASKED ON
16 CROSS-EXAMINATION ABOUT WHETHER DR. BURNEY, THE SURGEON
17 GENERAL IN 1959, WHEN HE SAID SMOKING CAUSES LUNG CANCER,
18 WHETHER THAT WAS JUST HIS OPINION OR WHETHER HE WAS TALKING
19 ON BEHALF OF THE U.S. PUBLIC HEALTH SERVICE?
20 MS. WILKINSON: OBJECTION, YOUR HONOR. THAT WAS IN
21 DR. DOLL'S CROSS. I NEVER ASKED DR. BURNS ABOUT ANYTHING
22 DR. BURNEY SAID.
23 THE COURT: SUSTAINED AS OUTSIDE THE SCOPE OF
24 REDIRECT -- OR, SORRY -- CROSS.
25 MR. PIUZE: WELL, I APOLOGIZE, THEN, IF THAT'S THE
26 CASE.
27 Q. ANYWAY, DR. BURNEY, HE COULDN'T HAVE MADE IT ON
28 THE NEXT SURGEON GENERAL'S ADVISORY COMMITTEE, HUH?
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1 A. THAT'S CORRECT.
2 Q. SO DOES THAT MAKE YOU FEEL BAD THAT YOU
3 WOULDN'T HAVE BEEN ABLE TO DO IT?
4 THE COURT: IT'S NOT IMPORTANT HOW HE FEELS.
5 Q. BY MR. PIUZE: IS IT THE CASE THAT ALL OF THE
6 SCIENTISTS THAT HAD REAL KNOWLEDGE ON THE SUBJECT WERE
7 AUTOMATICALLY DISQUALIFIED?
8 A. YES. THAT WAS THE INTENT.
9 Q. YOU WERE ASKED A SERIES OF QUESTIONS THIS
10 MORNING ABOUT CAMBRIDGE.
11 REMEMBER CAMBRIDGE?
12 A. YES.
13 Q. THE PACKAGE SAID .1, I THINK --
14 A. YES.
15 Q. -- MILLIGRAMS OF TAR?
16 A. THAT'S CORRECT.

17 Q. I BELIEVE ONE OF YOUR ANSWERS WAS THAT THE
18 MACHINES COULDN'T EVEN MEASURE IT.

19 DO YOU REMEMBER THAT?

20 A. THAT'S CORRECT.

21 Q. EXPLAIN THAT, PLEASE.

22 A. ONCE YOU GET DOWN BELOW A LEVEL OF ABOUT ONE
23 MILLIGRAM, THE MACHINES CANNOT ACCURATELY DISTINGUISH BETWEEN
24 THAT AND SOME OF THE BACKGROUND IS A SMALL AMOUNT OF THAT
25 OCCURS IN THE BACKGROUND. AND, THEREFORE, YOU CAN'T MAKE
26 ACCURATE MEASUREMENTS FOR PRODUCTS THAT ARE BELOW ONE
27 MILLIGRAM THAT DISTINGUISH IN THE MACHINE MEASUREMENT BETWEEN
28 THE PRODUCTS.

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1 Q. PART OF THE QUESTIONING ON THAT ISSUE --
2 YOUR HONOR, THIS HAS PREVIOUSLY BEEN MARKED AS
3 33.

4 THE COURT: OKAY. I THINK WE HAVE CALLED THAT
5 NOW -- THAT'S SOMETHING ROPER REPORT?

6 MR. PIUZE: NO, YOUR HONOR. THIS IS --

7 THE COURT: SORRY.

8 OKAY. IT'S NO. 17, MEMO TO CULLMAN FROM
9 WAKEHAM.

10 MR. PIUZE: YES. WAKEHAM.

11 THE COURT: OKAY. THAT'S 17 FOR IDENTIFICATION.

12 Q. BY MR. PIUZE: HERE'S WHERE I WANT TO BE. SEE
13 THAT MIDDLE PHOTOGRAPH THERE THAT TALKS ABOUT THE
14 ANNOUNCEMENT OF "HEALTH FACTS?"

15 I'M CONCENTRATING ON THE LAST FULL SENTENCE
16 HERE.

17 (READING:)

18
19 AS WE KNOW, ALL TOO OFTEN,
20 THE SMOKER SWITCHES TO A HI-FI CIGARETTE,
21 WINDS UP SMOKING MORE UNITS IN ORDER TO
22 PROVIDE HIMSELF WITH THE SAME DELIVERY WHICH
23 HE HAD BEFORE.

24
25 I GUESS IT'S TWO SENTENCES. SORRY.
26 (READING:)

27
28 IN SHORT, I DON'T BELIEVE THE
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1 SMOKING PATTERN HAS CHANGED MUCH, EVEN WITH
2 CANCER SCARES AND FILTER CIGARETTES.

3
4 NOW, IS THAT -- IS THAT THE CONCEPT WHEN YOU
5 WERE DISCUSSING WITH MS. WILKINSON ON CROSS-EXAMINATION ABOUT
6 THE FILTRATION HOLES AND THE WAY MACHINES SMOKE DIFFERENTLY
7 THAN PEOPLE?

8 A. YES, IT IS.

9 Q. REGARDLESS OF HOW MACHINES SMOKE, DO PEOPLE
10 ULTIMATELY TRY TO GET THEIR DOSE OF NICOTINE AND DO WITH THE
11 CIGARETTE WHAT IT TAKES TO GET IT?

12 A. YES. WE KNOW THAT PEOPLE ALTER THE PATTERN,
13 INTENSITY AND FREQUENCY OF SMOKING IN ORDER TO PRESERVE THEIR
14 INGESTION OF NICOTINE. THEY'RE ADDICTED TO THE NICOTINE, AND
15 THAT'S WHAT THEY'RE TRYING TO DERIVE FROM THE CIGARETTE.

16 IF THEY ARE DELIVERED LESS, THEY CHANGE THE WAY
17 THEY USE THE PRODUCT UNTIL THEY GET BACK TO THE DOSE THAT
18 THEY NEED.

19 Q. HERE'S ANOTHER NEW SUBJECT. THANK YOU.

20 YOU WERE ASKED ON CROSS-EXAMINATION ABOUT
21 PHILIP MORRIS PUTTING SOMETHING ON ITS WEB SITE IN 1999 AND
22 BEING ASKED IF YOU THOUGHT IT WAS A GOOD THING, AT WHICH TIME
23 YOU ASKED IF YOU COULD EXPLAIN.
24 DO YOU RECALL?
25 A. YES.
26 Q. I'M ASKING YOU FOR YOUR EXPLANATION NOW.
27 A. OKAY. PHILIP MORRIS PUT UP ON ITS WEB SITE
28 THAT THE PUBLIC HEALTH AUTHORITIES HAD CONCLUDED THAT SMOKING
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5997
1 CAUSED DISEASE.
2 AT THE SAME TIME, THEY MADE REPRESENTATIONS TO
3 OTHERS AND TO THE SECURITY AND EXCHANGE COMMISSION THAT THAT
4 STATEMENT WAS NOT AN ADMISSION BY PHILIP MORRIS THAT SMOKING
5 ACTUALLY CAUSED DISEASE.
6 SO THAT, I THOUGHT, WAS NOT AN APPROPRIATE
7 ACTION ON THE PART OF PHILIP MORRIS.
8 THEY CORRECTED THAT IN THE SUBSEQUENT YEAR AND
9 PUT ON A STATEMENT THAT SAID THAT THEY AGREED WITH THE
10 CONCLUSIONS OF THE PUBLIC HEALTH COMMUNITY. AND THAT, I
11 BELIEVE, WAS IN THE YEAR 2000.
12 Q. YOU WERE ALSO ASKED THIS MORNING ABOUT AN
13 ORGANIZATION CALLED NATIONAL -- LET ME START
14 AGAIN -- NATIONAL INTERAGENCY COUNCIL ON SMOKING AND HEALTH.
15 DO YOU RECALL THAT?
16 A. I DO.
17 Q. EITHER IN THE QUESTION OR IN THE ANSWER THERE
18 WAS SOME INFORMATION ABOUT WHO BELONGED TO THAT NATIONAL
19 INTERAGENCY COUNCIL.
20 A. YES.
21 Q. DO YOU RECALL THAT?
22 A. I DO.
23 Q. SPECIFICALLY, DID THE AMERICAN CANCER SOCIETY
24 BELONG TO IT?
25 A. YES, IT DID.
26 Q. AMERICAN COLLEGE OF CHEST PHYSICIANS?
27 A. YES.
28 Q. AMERICAN COLLEGE OF RADIOLOGY?
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5998
1 A. YES.
2 Q. AMERICAN HEART ASSOCIATION?
3 A. YES.
4 Q. AMERICAN LUNG ASSOCIATION?
5 A. YES.
6 Q. AMERICAN PHARMACEUTICAL ASSOCIATION?
7 A. YES.
8 Q. AMERICAN PUBLIC HEALTH ASSOCIATION?
9 A. YES.
10 Q. AMERICAN SCHOOL HEALTH ASSOCIATION?
11 A. YES.
12 Q. SOCIETY OF SURGICAL ONCOLOGY?
13 A. YES.
14 Q. UNITED STATES DEPARTMENT OF DEFENSE?
15 A. YES.
16 Q. UNITED STATES DEPARTMENT OF EDUCATION?
17 A. YES.
18 Q. UNITED STATES OFFICE OF SMOKING AND HEALTH?
19 A. YES.
20 Q. SO THAT A ORGANIZATION?
21 A. YES. IT'S A VERY GOOD ORGANIZATION. IS A VERY
22 GOOD ORGANIZATION.

23 Q. I GUESS THE POINT BEING MADE THIS MORNING WAS
24 THIS WAS AN ORGANIZATION THAT WAS DEVOTED TO TRY TO STOP
25 SMOKING AMONG AMERICANS.
26 A. YES. THAT'S ITS PRINCIPAL GOAL. THAT AND
27 PREVENTION OF SMOKING.
28 Q. I GUESS WE HEARD THAT YOU THOUGHT THAT WAS A
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1 GOOD THING.
2 A. YES. I THINK IT'S A VERY GOOD THING.
3 Q. WOULD YOU CRITICIZE A COMPANY FOR DONATING
4 MONEY TO AN ORGANIZATION LIKE THAT?
5 A. NO. I THINK THAT WOULD BE A VERY WORTHWHILE
6 THING FOR A COMPANY TO DO.
7 Q. WOULD IT NOT BE A GOOD THING TO PUNISH
8 COMPANIES FOR DONATING MONEY TO AN ORGANIZATION LIKE THAT?
9 MS. WILKINSON: OBJECTION, YOUR HONOR. TO RELEVANCE
10 AND BEYOND THE SCOPE.
11 THE COURT: OVERRULED.
12 THE WITNESS: NO. I THINK THAT IT WOULD BE
13 REPREHENSIBLE TO PUNISH A COMPANY FOR DONATING MONEY TO A
14 GOOD ORGANIZATION SUCH AS THE NATIONAL INTERAGENCY.
15 THE COURT: I JUST WANT TO -- THIS IS RELATED TO THE
16 DOW MERCK ISSUE?
17 MR. PIUZE: IT IS.
18 THE COURT: OVERRULED. SUSTAINED.
19 Q. BY MR. PIUZE: AND IF POSSIBLE --
20 THE COURT: THAT'S ALL RIGHT. THEY DON'T NEED TO
21 KNOW WHAT I'M TALKING ABOUT.
22 MR. PIUZE: I UNDERSTAND, YOUR HONOR. I'M SORRY TO
23 INTERRUPT.
24 Q. WHAT I WAS GOING TO SAY, DOCTOR, IS I'D LIKE TO
25 CHANNEL YOUR ANSWERS INTO SHORT YESES AND NOS HERE, PLEASE.
26 A. OKAY. I HAVE TROUBLE STOPPING TALKING, AS YOU
27 MAY HAVE NOTICED, BUT I WILL TRY.
28 THE COURT: WE'VE NOTICED.

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1 Q. BY MR. PIUZE: DO YOU HAVE EVIDENCE THAT
2 PHILIP MORRIS, INCORPORATED, PUNISHED, ECONOMICALLY PUNISHED
3 COMPANIES FOR DONATING MONEY TO THE NATIONAL INTERAGENCY
4 COUNCIL ON SMOKING AND HEALTH?
5 A. YES.
6 MS. WILKINSON: OBJECTION.
7 THE COURT: THE JURY WILL DISREGARD THE QUESTION AND
8 THE ANSWER.
9 WELL, I'M NOT SURE THIS IS THE APPROPRIATE WAY
10 TO GET THAT IN, MR. PIUZE, IF YOU'RE TALKING ABOUT THE DOW
11 MERCK ISSUE, NUMBER ONE.
12 NUMBER TWO, I DON'T WANT THE CONCLUSION AND
13 THEN A FOUNDATION IS LAID BECAUSE I'M NOT SURE YOU CAN LAY A
14 FOUNDATION THROUGH THIS GENTLEMAN.
15 MR. PIUZE: SHOULD I PROFFER UP A PIECE OF EVIDENCE
16 RIGHT NOW?
17 THE COURT: I'M SORRY. WHAT?
18 I DIDN'T HEAR YOU.
19 MR. PIUZE: CAN I PROFFER THE PIECE OF EVIDENCE RIGHT
20 NOW ON THAT ISSUE?
21 THE COURT: LET ME SEE YOU AT SIDEBAR BECAUSE I WANT
22 TO SEE THE EVIDENCE THAT YOU HAVE IN MIND TO ASK.
23
24 (THE FOLLOWING PROCEEDINGS WERE
25 HELD AT THE BENCH:)

26
27 THE COURT: THE RECORD SHOULD REFLECT WE'RE AT
28 SIDEBAR WITH THE THREE COUNSEL PREVIOUSLY STATED.
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6001

1 OKAY. HOW ARE YOU PLANNING ON GETTING THIS IN
2 THROUGH THIS PERSON?

3 EXPLAIN THAT TO ME.

4 MR. PIUZE: WELL, HE HAS FAMILIARITY WITH THE
5 DOCUMENT, AND I WAS -- RATHER THAN USE THE DOCUMENT, I WAS
6 GOING TO ASK HIM JUST EXACTLY WHAT I DID.

7 BUT THERE'S FOUNDATION FOR THE DOCUMENT, SO IF
8 THE DOCUMENT GOES IN, I DON'T HAVE TO DO IT THROUGH THIS
9 PERSON OR ANY PERSON BECAUSE IT'S OFF THE PHILIP MORRIS
10 WEB SITE. THERE IS FOUNDATION FOR IT.

11 AND I GUESS I SHOULD SAY FOR THE RECORD WHAT'S
12 OBVIOUS IS THAT THE CONCEPT OF OPENING THE DOOR WAS ALIVE
13 HERE THIS MORNING WHEN MS. WILKINSON PULLED THIS VERY AGENCY
14 OUT INTO HER QUESTIONING AND PUT IT TO THIS WITNESS, ISN'T
15 THIS A GREAT THING THAT PEOPLE LIKE THIS WERE OUT THERE
16 PROVIDING INFORMATION TO STOP SMOKING IN AMERICA, WHILE MY
17 ENTIRE CASE IS THAT PHILIP MORRIS WAS UNDERMINING THAT, AND
18 WHEN SHE USED THIS EXACT SPECIFIC HERE, I BELIEVE IT'S FAIR
19 GAME.

20 THE COURT: I'M NOT TALKING ABOUT THE DOW MERCK
21 EVIDENCE. I THINK I'VE ALREADY RULED ON THAT.

22 MR. PIUZE: RIGHT.

23 THE COURT: MY CONCERN IS WHETHER OR NOT HE CAN
24 APPROPRIATELY BRING IT INTO EVIDENCE.

25 THAT'S MY CONCERN. AND IF WE DON'T USE HIM,
26 TELL ME HOW YOU WERE GOING TO GET THIS IN.

27 MR. PIUZE: THERE IS FOUNDATION FOR THE DOCUMENT
28 BECAUSE IT'S OFF THEIR WEB SITE.

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1 NOW, THE QUESTION IS, MS. WILKINSON, HAVING
2 SAID WHAT SHE SAID THIS MORNING THROUGH THIS WITNESS, ISN'T
3 THIS NOW FAIR GAME, NOT THE DOW MERRELL ISSUE, NOT THE
4 NICOTINE GUM, NOT THE SMOKING GUN. THIS, ONE LETTER WHERE
5 PHILIP MORRIS SAYS TO DOW, YOU GAVE 25 BUCKS TO THIS GROUP,
6 WE WILL PULL OUR BUSINESS, OR WE WARNED YOU, WHY ISN'T THAT
7 TOTALLY RELEVANT NOW?

8 THE COURT: DON'T ARGUE WITH ME.

9 MR. PIUZE: I'M NOT. I'M ASKING.

10 THE COURT: I'M TRYING TO FIGURE OUT IF WE DON'T GO
11 THROUGH HIM, JUST TELL ME, FOR THIS, HOW WERE YOU GOING TO
12 GET IT IN?

13 I UNDERSTAND THE TOPIC IS IMPORTANT TO YOU.
14 I'M PASSED THAT. JUST TELL ME HOW YOU WERE GOING TO GET IT
15 IN IF IT WASN'T THROUGH HIM?

16 MR. PIUZE: IT'S OFF OF THEIR WEB SITE, SO THERE'S
17 FOUNDATION ESTABLISHED.

18 THE COURT: ALL RIGHT. AND WERE YOU GOING TO BRING
19 IN SOME WITNESS TO TALK ABOUT IT?

20 MR. PIUZE: NO. IT'S RIGHT HERE. IT SPEAKS FOR
21 ITSELF, AS THEY SAY.

22 THE COURT: OKAY.

23 MS. WILKINSON, YOU NEED TO GET A LITTLE CLOSER
24 TO THIS MIKE.

25 MS. WILKINSON: THANK YOU, YOUR HONOR.

26 CAN I LOOK AT THE DOCUMENT AGAIN, YOUR HONOR?

27 I THOUGHT YOUR HONOR RULED ON THIS, THAT IT WAS
28 NOT RELATED TO THE PLAINTIFF AND WAS GOING TO BE EXCLUDED.

1 WHEN I TALKED TO DR. --

2 THE COURT: OH, NO, NO. I DIDN'T SAY THAT ABOUT THE
3 DOW MERCK THINGS.

4 MS. WILKINSON: YOUR HONOR, CAN I JUST SAY ONE THING?
5 THERE'S A COUPLE TIMES WHERE YOU JUMP ON ME,
6 PARTICULARLY WHEN I SAY THINGS. AND MAYBE I'M WRONG --

7 THE COURT: I JUMP ALL OVER MR. PIUZE, TOO.

8 MS. WILKINSON: WELL -- I'M --

9 THE COURT: I DON'T NEED THE EDITORIAL RIGHT NOW.
10 JUST TELL ME WHAT THE ISSUE IS.

11 MS. WILKINSON: MAYBE I'M WRONG, BUT I THOUGHT I READ
12 YOUR RULING SAYING THAT THE DOW NICORETTE ISSUE WAS NOT TO
13 COME IN BECAUSE IT WAS UNRELATED TO THE PLAINTIFF.

14 IF I'M WRONG, I APOLOGIZE. I'M TELLING YOU I
15 READ YOUR ORDER AND SO MR. GARDNER. THAT'S WHAT IT SAID, I
16 THOUGHT.

17 THE COURT: CAN I SEE THE PRIOR MOTIONS IN LIMINE
18 RULINGS.

19 MR. PIUZE: NICORETTE GUM -- DOW MERRELL, NICORETTE
20 GUM, I WANT TO MENTION, AND THIS DOESN'T TALK ABOUT NICORETTE
21 GUM.

22 THE COURT: I KNOW IT DOESN'T. I UNDERSTAND THAT.

23 ALL RIGHT. SO THAT'S THE DIFFERENCE, THEN, IS
24 WHAT YOU'RE TALKING ABOUT. THE -- EXCUSE ME.

25 IT'S A WAY LATE NUMBER. IT'S LIKE 10, D-10 OR
26 SOMETHING.

27 OKAY. I STAND CORRECTED. I WANT TO APOLOGIZE
28 FOR BEING WRONG ON MY PREVIOUS RULING.

1 YOU CAN'T GET IT IN.

2 MR. PIUZE: CANNOT?

3 THE COURT: NOT.

4
5 (THE FOLLOWING PROCEEDINGS WERE HELD
6 IN OPEN COURT IN THE PRESENCE
7 OF THE JURY:)

8
9 THE COURT: JUST SO WE'RE ALL CLEAR, FOLKS, AS YOU
10 LEARNED DURING THIS TRIAL, I AM TRULY AN EQUAL OPPORTUNITY
11 GRUMP. I JUMP ON BOTH SIDES, I HOPE, EQUALLY. BUT IT'S
12 MEANT TO BE EQUALLY. AND I WILL CONTINUE TO DO SO. DON'T BE
13 PREJUDICED AGAINST EITHER SIDE IF I GRUMP AT THEM.

14 MR. PIUZE.

15 Q. BY MR. PIUZE: AS FAR AS YOU'RE CONCERNED,
16 EVERYTHING THE NATIONAL INTERAGENCY COUNCIL ON SMOKING AND
17 HEALTH DID TO STOP PEOPLE FROM STARTING TO SMOKE AND TO STOP
18 PEOPLE WHO WERE SMOKING WAS GREAT?

19 A. YES.

20 Q. SOMETHING TO BE ENCOURAGED?

21 A. YES.

22 Q. ALMOST DONE.

23 HERE IS 225.01.

24 THE COURT: IS -- HAS THAT PREVIOUSLY BEEN MARKED?

25 MR. PIUZE: I BELIEVE THE ANSWER'S YES.

26 THE COURT: IT'S 11 FOR IDENTIFICATION.

27 MR. PIUZE: "FACE THE NATION."

28 THE COURT: 11 FOR IDENTIFICATION IS TRANSCRIPT OF

1 THE "FACE THE NATION" BLOWUP.

2 Q. BY MR. PIUZE: REMEMBER THE DOCUMENT WE
3 DISCUSSED LAST THURSDAY ABOUT A PSYCHOLOGICAL CRUTCH?

4 A. YES.

5 Q. DO YOU REMEMBER IT WAS PHILIP MORRIS' CEO THAT
6 WAS OFFERING A PSYCHOLOGICAL CRUTCH?

7 A. YES.

8 Q. AS SOMEONE IN THE TOBACCO CONTROL FIELD, AFTER
9 THE U.S. SURGEON GENERAL RELEASED THE REPORT IN 1964 THAT
10 YOU'VE HEARD SO MUCH ABOUT, DO HAVE YOU AN OPINION AS TO
11 WHETHER OR NOT IT HELPED OR HURT THE PUBLIC HEALTH INTERESTS
12 TO OFFER SMOKERS A PSYCHOLOGICAL CRUTCH AND SELF-RATIONALE TO
13 KEEP GOING?

14 A. YES, I DO.

15 Q. WHAT'S THAT?

16 MS. WILKINSON: OBJECTION.

17 THE COURT: HOLD ON FOR A SECOND.

18 AND YOUR OBJECTION, SUCCINCTLY STATED, IS NO
19 FOUNDATION, PRIOR --

20 MS. WILKINSON: AND BEYOND THE SCOPE OF EXPERT
21 TESTIMONY. BOTH, YOUR HONOR. THIS PARTICULAR EXPERT.

22 THE COURT: SUSTAINED.

23 Q. BY MR. PIUZE: THIS IS LAST FOR ME.

24 A. OKAY.

25 Q. YOU WERE ASKED A SHORT SERIES OF QUESTIONS THIS
26 MORNING ABOUT WHETHER YOU THOUGHT SMOKING AND NOT SMOKING AND
27 STOPPING SMOKING HAD TO DO WITH PERSONAL RESPONSIBILITY.

28 REMEMBER THAT?

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6006

1 A. YES.

2 Q. SMOKER'S PERSONAL RESPONSIBILITY?

3 A. YES.

4 Q. TOBACCO INDUSTRY'S PERSONAL RESPONSIBILITY?

5 A. YES.

6 Q. PHILIP MORRIS' PERSONAL RESPONSIBILITY?

7 A. ABSOLUTELY.

8 Q. LOOKING BACK, WHAT WAS THE FIRST YEAR YOU WERE
9 INVOLVED IN THE SMOKING AND HEALTH ISSUE AGAIN?

10 A. THE FIRST YEAR THAT I WAS INVOLVED IN PUBLIC
11 HEALTH SERVICE WAS 1974.

12 Q. LOOKING BACK OVER 29 YEARS -- I CAN
13 SUBTRACT -- 29 YEARS OF BACKGROUND IN THE PUBLIC HEALTH
14 FIELD, SMOKING AND HEALTH AND HEALTH CONTROL IS YOUR FIELD,
15 HAS PHILIP MORRIS LIVED UP TO ITS PERSONAL RESPONSIBILITY
16 WHEN IT COMES TO SMOKING AND HEALTH ISSUES?

17 MS. WILKINSON: OBJECTION. BEYOND THE SCOPE. AGAIN,
18 AS I STATED EARLIER --

19 THE COURT: SUSTAINED.

20 Q. BY MR. PIUZE: PERSONAL RESPONSIBILITY IS NOT A
21 ONE-WAY STREET?

22 A. I BELIEVE IT'S NOT.

23 MR. PIUZE: I BELIEVE I'VE GOT NO FURTHER QUESTIONS.

24 THE COURT: MS. WILKINSON.

25 MS. WILKINSON: THANK YOU, YOUR HONOR.

26 I START BY STIPULATING, I THINK MR. PIUZE IS A
27 BETTER SPELLER THAN I AM.

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6007

1 RE-CROSS-EXAMINATION

2 BY MS. WILKINSON:

3 Q. I'M GOING TO HAND YOU SOME DOCUMENTS,

4 MR. BURNS. I BELIEVE YOU TOLD MR. PIUZE JUST NOW THAT YOU

5 DIDN'T BELIEVE THAT THERE WAS ANY EVIDENCE OF
6 MR. RELLER'S -- OR SUFFICIENT EVIDENCE OF MR. RELLER'S
7 EXPOSURE TO ASBESTOS; IS THAT RIGHT?

8 A. I SAID THAT THERE WASN'T ANY EVIDENCE OF
9 SUFFICIENT EVIDENCE TO ASBESTOS.

10 Q. WELL, YOU HAVEN'T LOOKED AT THE EVIDENCE OF HIS
11 EXPOSURE IN THIS CASE; THAT'S WHAT YOU TOLD ME DURING THE
12 ORIGINAL CROSS-EXAMINATION, RIGHT?

13 A. NO. WHAT I TOLD YOU WAS THAT I HADN'T LOOKED
14 AT HIS WORK HISTORY.

15 I HAD LOOKED AT THE EVIDENCE IN HIS PATHOLOGY
16 AS TO THE SUFFICIENCY OF THAT EXPOSURE TO HAVE CAUSED INJURY
17 TO THE LUNG.

18 Q. WELL, YOU WERE TALKING ABOUT OCCUPATIONAL
19 EXPOSURE EARLIER, RIGHT?

20 A. YES.

21 Q. AND YOU WERE TALKING ABOUT SUFFICIENT OR
22 INSUFFICIENT EXPOSURE BASED ON NOT THE MEDICAL RECORDS, BUT
23 WHETHER SOMEBODY ACTUALLY COMES INTO CONTACT WITH ASBESTOS
24 DUST, RIGHT?

25 A. THAT'S CORRECT.

26 Q. THAT'S NOT THE MEDICAL SIDE; THAT'S THE
27 EXPOSURE SIDE, RIGHT?

28 A. THAT'S CORRECT.

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6008

1 Q. SO SPEAKING OF THE EXPOSURE SIDE, YOU HAVE
2 NEVER LOOKED AT THE ACTUAL EVIDENCE IN THIS CASE OF
3 MR. RELLER'S EXPOSURE TO ASBESTOS?

4 A. THAT'S CORRECT.

5 Q. SO ANYTHING YOU SAID ABOUT MR. RELLER'S
6 EXPOSURE BASED ON THE EXPOSURE EVIDENCE AND NOT THE MEDICAL
7 IS PURELY BASED ON HYPOTHETICALS THAT MR. PIUZE JUST GAVE
8 YOU?

9 A. THAT'S CORRECT.

10 Q. OKAY. AND THEN YOU SAID YOU DID LOOK AT THE
11 MEDICAL EVIDENCE BASED ON, IN PART, DR. HAMMAR'S REPORT,
12 RIGHT?

13 A. THAT'S CORRECT.

14 Q. AND IN THAT REPORT, DR. HAMMAR SAYS, WHEN HE
15 LOOKED AT THE PATHOLOGY THAT YOU DIDN'T LOOK AT, THERE WAS A
16 BACKGROUND OF INTERSTITIAL FIBROSIS, CORRECT?

17 A. I DON'T BELIEVE THAT THAT'S A FULL
18 CHARACTERIZATION OF WHAT HE WROTE.

19 Q. ALL RIGHT. WELL, LET'S LOOK AT HIS REPORT,
20 SHALL WE?

21 THIS IS PAGE 1 JUST FOR IDENTIFICATION.

22 THE COURT: OKAY. THAT IS GOING TO BE NO. 31. 31 IS
23 DR. HAMMAR'S REPORT.

24 DID I HEAR THAT RIGHT?

25 MS. WILKINSON: YES, PLEASE, YOUR HONOR.

26 THE COURT: OKAY. DR. HAMMAR'S REPORT, PAGE 1.

27

28 (I.D. 1 - DR. HAMMAR'S REPORT.)

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6009

1 Q. BY MS. WILKINSON: AND IT SAYS, DIAGNOSTIC
2 SPECIALTIES LABORATORY, AND THAT IS MR. HAMMAR'S
3 ORGANIZATION, CORRECT -- DR. HAMMAR?

4 A. OKAY.

5 Q. LET ME SHOW YOU THE LAST PAGE.

6 A. I'M ASSUMING THIS IS HIS REPORT. IT LOOKS LIKE
7 WHAT I I READ.

8 Q. LET'S LOOK AT THE LAST PAGE, JUST SO WE DON'T
9 HAVE ANY MISUNDERSTANDING HERE, AND THIS HAS, DOWN HERE,
10 SAM HAMMAR, RIGHT?

11 A. YES.

12 Q. SO THAT'S HIS REPORT?

13 A. YES.

14 Q. AND, IN FACT, IT'S TYPED DOWN HERE AT THE
15 BOTTOM, JUST -- EXCUSE ME -- SO THERE'S NO MISUNDERSTANDING,
16 I CAN GET IT TO -- THIS SAYS, SAMUEL HAMMAR, M.D., RIGHT?

17 A. YES.

18 Q. AND THE OTHER DOCTORS THAT HE WORKS WITH?

19 A. THAT'S CORRECT.

20 Q. OKAY. AND THIS REPORT, IF WE GO BACK TO THE
21 FIRST PAGE -- LET ME FOCUS FOR MINUTE -- WAS ADDRESSED TO
22 GERALDINE WEISS, RIGHT?

23 A. THAT'S CORRECT.

24 Q. THAT'S AN ATTORNEY THAT WORKS WITH MR. PIUZE ON
25 THIS CASE?

26 A. I BELIEVE THAT'S CORRECT.

27 Q. YOU'VE TALKED TO HER, HAVEN'T YOU?

28 A. I DON'T RECALL HAVING TALKED WITH HER.

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6010

1 Q. OKAY. BUT YOU KNOW SHE WORKS WITH MR. PIUZE?

2 A. I'VE SEEN HER NAME, YES.

3 Q. OKAY. AND DOWN THERE, IT SAYS, FROM THE LAW
4 OFFICES OF MICHAEL PIUZE, RIGHT?

5 A. THAT'S CORRECT.

6 Q. AND THIS SHOWS THAT ALL THESE SPECIMENS WERE
7 SENT TO DR. HAMMAR, CORRECT?

8 A. THAT'S CORRECT.

9 Q. SO HE DID LOOK AT ALL THE PATHOLOGY SLIDES?

10 A. YES, HE DID.

11 Q. AND ON PAGE 2, HE SAYS -- YOU AND I WERE
12 TALKING ABOUT INTERSTITIAL FIBROSIS, CORRECT?

13 A. THAT'S CORRECT.

14 Q. AND HE SAYS:

15
16 THERE IS A BACKGROUND OF
17 INTERSTITIAL FIBROSIS AND PLEURAL
18 THICKENING.

19
20 CORRECT?

21 A. THAT'S QUITE CORRECT.

22 Q. BOTH OF THOSE CAN BE INDICATIVE OF ASBESTOS
23 EXPOSURE, CORRECT?

24 A. BOTH OF THEM CAN BE, THAT'S CORRECT.

25 Q. DR. BURNS, YOU KNOW, IT HELPS, JUST LIKE
26 YOU -- MR. PIUZE ASKED YOU TO HAVE YES/NO ANSWERS. IF YOU
27 CAN DO THE SAME WITH ME.

28 A. I ADMIT TO HAVING SOME DIFFICULTY BECAUSE OF
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6011

1 THE CHARACTERIZATION THAT YOU'RE MAKING OF THIS EVIDENCE, BUT
2 I'LL DO MY BEST.

3 Q. I JUST SAID IT'S INDICATIVE, CAN BE INDICATIVE
4 OF EXPOSURE TO ASBESTOS; THAT'S TRUE, ISN'T IT?

5 A. WHAT IS TRUE?

6 THAT INTERSTITIAL FIBROSIS OR THAT THIS
7 STATEMENT ABOUT INTERSTITIAL FIBROSIS IN THIS REPORT CAN BE?

8 Q. NO. I SAID, CAN INTERSTITIAL FIBROSIS AND
9 PLEURAL THICKENING BE INDICATIVE -- THEY CAN BE INDICATIVE OF
10 EXPOSURE TO ASBESTOS?

11 A. YES. ASBESTOS EXPOSURE CAN CAUSE BOTH OF THOSE
12 PHENOMENA.
13 Q. OKAY. AND LET'S GO DOWN HERE.
14
15 THERE ARE REGIONS WHERE THE
16 TISSUE HAS AN APPEARANCE SUGGESTIVE OF
17 PLEURAL PLAQUE CAUSED BY ASBESTOS HAVING AN
18 A BASKETWEAVE PATTERN.
19
20 A. THAT'S CORRECT.
21 Q. NO DOUBT THERE THAT IT SAYS THAT'S SUGGESTIVE
22 OF ASBESTOS, CORRECT?
23 A. THAT IS NOT SUGGESTIVE OF ASBESTOS. IT IS
24 SAYING THAT THE PATTERN IS SIMILAR TO THAT FORMED BY
25 ASBESTOS.
26 Q. WELL, IT DOESN'T SAY SIMILAR; IT SAYS CAUSED BY
27 ASBESTOS, DOESN'T IT?
28 A. IT SAYS, "...THE TISSUE HAS AN APPEARANCE
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6012
1 SUGGESTIVE OF PLEURAL PLAQUE CAUSED BY ASBESTOS HAVING A
2 BASKETWEAVE PATTERN."
3 Q. OKAY.
4 AND HE FURTHER EXPLAINS:
5
6 THERE WAS A SUGGESTION IN SOME
7 SLIDES OF PLEURAL PLAQUE CAUSED BY ASBESTOS,
8 ALTHOUGH THIS TYPE OF CHANGE MAY HAVE
9 REPRESENTED A DESMOPLASTIC REACTION.
10
11 CORRECT?
12 A. THAT'S CORRECT.
13 Q. SO HE'S SAYING THERE'S A DIFFERENCE
14 TWICE -- LOOK AT IT -- RIGHT?
15 A. HE'S SAYING BOTH EVENTS COULD CAUSE IT.
16 Q. OKAY. AND DOWN AT THE BOTTOM HERE, HE SAYS:
17
18 BASED ON THE INFORMATION
19 AVAILABLE, THE TUMOR -- EXCUSE ME -- TUMOR
20 HAD THE APPEARANCE OF WHAT IS REFERRED TO AS
21 PSEUDOMESOTHELIOMATOUS CARCINOMA.
22
23 CORRECT?
24 A. THAT'S CORRECT.
25 Q. (READING:)
26
27 THIS IS A TUMOR THAT MOST
28 FREQUENTLY OCCURS IN CIGARETTE SMOKERS.
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6013
1 RIGHT?
2 A. THAT'S CORRECT.
3 Q. (READING:)
4
5 AND IN MY EXPERIENCE ALSO
6 OCCURS IN INDIVIDUALS EXPOSED TO ASBESTOS.
7
8 A. THAT'S ALSO CORRECT.
9 Q. AND HE SAYS, THAT ALL THESE CONCLUSIONS ARE
10 BASED ON A REASONABLE DEGREE OF MEDICAL CERTAINTY.
11 A. YES.
12 Q. SO HE DOESN'T ELIMINATE ASBESTOS, CORRECT?
13 A. MY UNDERSTANDING OF READING THE REPORT IN

14 CONTEXT IS THAT HE DOES NOT FIND EVIDENCE OF ASBESTOS
15 EXPOSURE SUFFICIENT TO INCREASE THE RISK OF LUNG CANCER IN
16 THIS PATHOLOGY.
17 YOU MAY ASK HIM WHEN HE GETS HERE AS TO WHETHER
18 MY INTERPRETATION OF THAT REPORT IS CORRECT.
19 Q. WELL, YOUR INTERPRETATION -- HE DOESN'T SAY
20 THAT IN THIS REPORT, DOES HE?
21 A. I BELIEVE HE DOES.
22 Q. ALL RIGHT.
23 A. BUT THAT'S A DIFFERENCE OF ANYONE IN TERMS OF
24 INTERPRETING THE LANGUAGE, I GUESS. I THOUGHT HE MADE IT
25 PRETTY CLEAR HERE.
26 Q. WE'LL LEAVE THAT UP TO DR. HAMMAR.
27 A. CERTAINLY.
28 Q. AND HAVE YOU SEEN AN AFFIDAVIT THAT HE ALSO
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6014

1 SUBMITTED IN THIS CASE?
2 A. I DON'T RECALL WHETHER I'VE SEEN AN AFFIDAVIT
3 OR NOT.
4 Q. SO YOU DON'T KNOW IF IN THAT AFFIDAVIT HE ALSO
5 TALKS ABOUT THIS PSEUDOMESOTHELIOMATOUS THAT MR. RELLER HAS
6 IS CAUSED BY OR CAN BE CAUSED BY ASBESTOS, CORRECT?
7 A. I DON'T KNOW WHETHER HE DID. THAT'S NOT THE
8 ISSUE OR THE QUESTION.
9 Q. NOW, YOU WERE TALKING ABOUT DOSE RESPONSE,
10 RIGHT?
11 A. YES.
12 Q. AND YOU WERE TALKING ABOUT THE MORE EXPOSURE
13 YOU HAVE, THE HIGHER THE DOSE, THE MORE LIKELY --
14 A. THAT'S CORRECT.
15 Q. -- THAT YOU COULD HAVE THE DISEASE?
16 WHEN IT COMES TO ADENOCARCINOMA FOR ASBESTOS?
17 A. WHEN IT COMES TO LUNG CANCER.
18 Q. WHICH IS ADENOCARCINOMA?
19 A. ADENOCARCINOMA IS ONE LUNG CANCER, YES.
20 Q. YOU SAID WHEN YOU HAVE MESOTHELIOMA, YOU DON'T
21 NEED SUCH A HIGH EXPOSURE?
22 A. WELL, THAT'S NOT QUITE TRUE.
23 WHAT I SAID WAS THAT THE DOSE RESPONSE IS VERY
24 FLAT, AND A LOW DOSE CREATES A RISK.
25 Q. OKAY. NOW, YOU WROTE ABOUT SOME OF THIS IN THE
26 1985 SURGEON GENERAL'S REPORT, CORRECT?
27 A. THAT'S CORRECT.
28 Q. AND, IN FACT, YOU WERE ONE OF THE EDITORS ON
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6015

1 THE CHAPTER RELATED TO EXPOSED -- ASBESTOS-EXPOSED WORKERS,
2 CHAPTER 6, RIGHT?
3 A. THAT'S CORRECT.
4 Q. ALL RIGHT. THIS IS WAS WRITTEN OR PUBLISHED IN
5 1985?
6 A. THAT'S CORRECT.
7 Q. THE SAME YEAR THAT YOU WERE TESTIFYING, EITHER
8 BY DEPOSITION OR IN TRIAL, IN APPROXIMATELY TEN
9 ASBESTOS-RELATED CASES, RIGHT?
10 A. THAT'S CORRECT.
11 Q. SO EVEN THOUGH YOU WEREN'T TESTIFYING AT TRIAL,
12 YOU TESTIFIED IN ALL THOSE CASES AT TRIAL, YOU ALSO TESTIFIED
13 IN DEPOSITION IN THOSE CASES?
14 A. I GUESS I DON'T UNDERSTAND WHAT I DIDN'T ANSWER
15 FOR.
16 Q. WELL, MR. PIUZE POINTED OUT THAT YOU ONLY

17 TESTIFIED IN THREE TRIALS FOR ASBESTOS COMPANIES.
18 A. THAT'S CORRECT.
19 Q. BUT YOU TESTIFIED IN DEPOSITION BECAUSE, IN A
20 LOT OF CASES, IT NEVER GOES TO TRIAL, RIGHT?
21 A. THAT'S CORRECT.
22 Q. THEY SETTLE --
23 A. THAT'S CORRECT.
24 Q. -- SOMETIMES. OKAY.
25 BUT YOU WERE TESTIFYING ON BEHALF OF THE
26 ASBESTOS COMPANY IN TEN OF THOSE CASES IN 1985 WHEN YOU WROTE
27 THIS CHAPTER?
28 A. THAT'S CORRECT.
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6016

1 Q. ALL RIGHT. AND YOU TALKED ABOUT THE EXPOSURE
2 OF ASBESTOS WORKERS, RIGHT?
3 A. YES.
4 Q. BUT YOU ALSO TALKED ABOUT PEOPLE WHO WEREN'T
5 WORKING, LIKE CHILDREN OF ASBESTOS WORKERS AND WIVES OF
6 ASBESTOS WORKERS WHO MIGHT COME IN CONTACT WITH THEIR WORK
7 CLOTHING, WOULD INCREASE THE RISK FOR MESOTHELIOMA AND
8 POSSIBLY OTHER DISEASES.
9 RIGHT?
10 A. THAT'S WHAT SELIKOFF AND LEE SAID, YES.
11 Q. AND THAT IS WHAT WAS KNOWN BACK IN 1985?
12 A. THAT'S CORRECT.
13 Q. THAT WAS YOUR BEST ASSESSMENT OF THE SCIENTIFIC
14 LITERATURE AT THAT TIME?
15 A. THAT'S CORRECT.
16 Q. BUT AS YOU TOLD ME EARLIER, SCIENCE HAS EVOLVED
17 SINCE 1985, THANKFULLY, RIGHT?
18 A. YES.
19 Q. AND SOMETIMES, YOU HAVE RARE FORMS OF A
20 DISEASE, LIKE THIS PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA,
21 RIGHT?
22 A. YES.
23 Q. AND. YOU DON'T HAVE ANY DATA THAT'S AVAILABLE
24 IN THE LITERATURE TO SAY WHAT THE EXPOSURE REQUIREMENTS ARE
25 TO CAUSE PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA, DO YOU.
26 JUST THE DATA, DR. BURNS?
27 A. YOUR QUESTION'S DIFFICULT TO ANSWER.
28 THE ANSWER TO YOUR QUESTION IS BOTH YES OR NO.
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6017

1 THERE WAS NO DATA SPECIFIC TO THAT DISEASE PROCESS. THE --
2 Q. THAT'S WHAT I ASKED, DR. BURNS. I ASKED
3 SPECIFICALLY PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA.
4 IT SEEMS WHEN I ASK YOU THE QUESTIONS --
5 THE COURT: DON'T ARGUE WITH HIM.
6 Q. BY MS. WILKINSON: LET'S JUST START WITH THAT.
7 PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA ONLY.
8 DO YOU HAVE DATA FOR ONLY THAT DISEASE TO SHOW
9 WHAT IS SUFFICIENT EXPOSURE FROM ASBESTOS TO CAUSE THAT?
10 A. I HAVE THE ORIGINAL DATA THAT I AM AWARE OF
11 THAT IS SPECIFIC TO THAT DISEASE FOR ASBESTOS ALONE.
12 Q. OKAY. SO THERE'S NO DEFINED DOSE RESPONSE
13 CURVE, LIKE YOU WERE TALKING ABOUT FOR THAT SPECIFIC FORM OF
14 ADENOCARCINOMA, THAT BEING PSEUDOMESOTHELIOMATOUS
15 ADENOCARCINOMA?
16 A. OTHER THAN THE DOSE RESPONSE CURVE THAT WE
17 WOULD USE FOR ALL ADENOCARCINOMA, THERE IS NO DATA THAT
18 SPECIFICALLY LOOKS AT THAT FOR THIS SUBTYPE OF
19 ADENOCARCINOMA.

20 Q. ONE MORE TIME.
21 THERE IS NO DATA OR DEFINED DOSE RESPONSE CURVE
22 FOR PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA, IS THERE?
23 A. THERE'S NO DATA FOR THAT EXCLUSIVE DISEASE
24 CATEGORY.
25 MS. WILKINSON: I DON'T HAVE ANY FURTHER QUESTIONS.
26 THANK YOU.
27 THE COURT: MR. PIUZE.
28 MR. PIUZE: REAL BRIEF.
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6018

1
2 FURTHER REDIRECT EXAMINATION
3 BY MR. PIUZE:

4 Q. SELIKOFF. WHO IS SELIKOFF?
5 A. I THINK SELIKOFF WAS ONE OF THE EPIDEMIOLOGISTS
6 WHO FIRST CHARACTERIZED THE RELATIONSHIP BETWEEN ASBESTOS AND
7 A VARIETY OF DIFFERENT DISEASES, AND IN A CONCLUSIVE WAY, AND
8 WHO DESCRIBED THE INTERACTION BETWEEN SMOKING AND ASBESTOS.

9 Q. GUYS, MEN, WHO USED TO COME HOME FROM THE
10 SHIPYARDS, OR WHEREVER THEY WERE WORKING WITH ASBESTOS, DAY
11 IN, DAY OUT, IN A THICK HAZE, COME HOME, TAKE OFF THEIR
12 CLOTHES, DROP THEIR CLOTHES FULL OF THIS STUFF ON THE FLOOR.

13 AT THE TIME, WAS IT KNOWN THAT THEIR WIVES AND
14 KIDS COULD BREATHE IN ENOUGH OF THAT STUFF TO CAUSE
15 MESOTHELIOMA?

16 A. NOT AT THE TIME THAT THE WORKERS WERE DOING
17 THAT.

18 SUBSEQUENTLY, UNFORTUNATELY, FROM THE
19 CONSEQUENCES IN THOSE GROUPS, WE KNOW THAT THAT LEVEL OF
20 EXPOSURE COULD CAUSE MESOTHELIOMA.

21 Q. AND THESE WIVES AND KIDS THAT WERE GETTING
22 EXPOSED TO THESE, ALL THE CLOTHES COMING OFF FULL OF THE
23 DUST, IS THAT A ONE-TIME EVENT, A 20-TIME EVENT, OR, LIKE,
24 50 TIMES?

25 A. THAT WOULD PRESUMABLY BE EVERY DAY THAT THE
26 INDIVIDUAL WORKED OVER THE LIFETIME OF THE INDIVIDUAL WHO WAS
27 WORKING FOR THE WIFE AND OVER THE CHILDHOOD OF THE CHILD
28 WHILE LIVING AT HOME.

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6019

1 Q. THAT'S NEVER BEEN RETRACTED IN ANY SENSE, HAS
2 IT?

3 A. NO, IT HAS NOT.

4 Q. THIS IS THE SAME MESOTHELIOMA THAT HAS THE FLAT
5 RESPONSE CURVE?

6 A. THAT'S CORRECT.

7 MR. PIUZE: NO FURTHER QUESTIONS.

8 THE COURT: MS. --

9 MS. WILKINSON: I'M DONE. THANK YOU, YOUR HONOR.

10 THE COURT: ALL RIGHT. THANK YOU.

11 MAY THIS WITNESS BE EXCUSED, MR. PIUZE?

12 MR. PIUZE: YES.

13 MS. WILKINSON: YES, YOUR HONOR.

14 THE COURT: THANK YOU VERY MUCH FOR COMING. YOU'RE
15 EXCUSED.

16 THE WITNESS: THANK YOU, YOUR HONOR. IT'S BEEN A
17 PRIVILEGE.

18 THE COURT: THANK YOU.

19 MR. PIUZE: GO GET MY NEXT WITNESS.

20 THE COURT: ALL RIGHT.

21
22 (SHORT PAUSE.)

23
24 THE COURT: SIR, IF YOU'D COME AROUND OVER HERE,
25 RAISE YOUR RIGHT HAND, AND FACE THE CLERK TO BE SWORN.
26 SAMUEL HAMMAR,
27 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN FIRST DULY
28 SWORN, TESTIFIED AS FOLLOWS:
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1 THE CLERK: THANK YOU. PLEASE BE SEATED.
2 SIR, PLEASE STATE AND SPELL YOUR NAME FOR THE
3 RECORD.
4 THE WITNESS: SAMUEL HAMMAR, S A-M-U-E-L,
5 H-A-M-M-A-R.
6 THE CLERK: THANK YOU.
7 THE COURT: MR. PIUZE.
8

9 DIRECT EXAMINATION

10 BY MR. PIUZE:

11 Q. GOOD AFTERNOON.
12 A. GOOD AFTERNOON.
13 Q. WHAT'S YOUR OCCUPATION, PLEASE.
14 A. I'M A MEDICAL DOCTOR. MY SPECIALTY IS
15 PATHOLOGY.
16 Q. WHAT'S PATHOLOGY?
17 A. PATHOLOGY MEANS THE STUDY OF DISEASE. AND
18 THERE ARE FOUR BASIC TYPES.
19 ONE'S CALLED ANATOMIC PATHOLOGY.
20 ANOTHER'S CALLED CLINICAL PATHOLOGY.
21 THIRD IS CALLED FORENSIC PATHOLOGY.
22 AND A FOURTH IS EXPERIMENTAL PATHOLOGY.

23 Q. WHAT DO YOU?
24 A. KIND OF ALL OF THEM. I DO MOST ANATOMIC
25 PATHOLOGY AT THE PRESENT TIME, BUT HAVE DONE ALL OF THOSE IN
26 THE PAST, AND STILL DO SOME CLINICAL PATHOLOGY AND SOME
27 EXPERIMENTAL PATHOLOGY.

28 Q. AS A PATHOLOGIST, DO YOU CONCENTRATE ON
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6021

1 PATHOLOGY FROM A CERTAIN PART OF THE HUMAN BODY?

2 A. YES.
3 Q. WHAT?
4 A. THE LUNGS AND THE CHEST CAVITY.
5 Q. DOES THAT MAKE YOU A PULMONARY PATHOLOGIST?
6 A. YES.
7 Q. HOW LONG HAVE YOU BEEN A PULMONARY PATHOLOGIST?
8 A. WELL, THERE'S NOT AN ABSOLUTE SPECIALTY IN
9 PULMONARY PATHOLOGY, BUT I HAVE DEVOTED INTEREST TO THAT AREA
10 OF PATHOLOGY FOR ABOUT THE LAST 20 YEARS.

11 Q. OKAY.
12 DOES A PULMONARY PATHOLOGIST GET TO SEE TISSUE
13 TAKEN FROM THE CHESTS OF PEOPLE WHO HAVE LUNG CANCER?
14 A. YES.
15 Q. DOES A PULMONARY PATHOLOGIST GET TO SEE TISSUE
16 TAKEN FROM THE LUNGS OF PEOPLE THAT HAVE MESOTHELIOMA?
17 A. YES.
18 Q. DOES A PULMONARY PATHOLOGIST GET TO SEE TISSUE
19 TAKEN FROM THE LUNGS OF PEOPLE WHO HAVE ALL OTHER KINDS OF
20 VARIOUS LUNG DISEASES?

21 A. YES.
22 Q. HAVE YOU LOOKED AT TISSUE AND STUDIED TISSUE
23 THAT'S BEEN TAKEN OUT OF THE LUNGS OF PEOPLE WITH
24 MESOTHELIOMA?
25 A. MANY TIMES.

26 Q. AND CAN YOU GIVE US A BALLPARK?
27 A. WELL, I'VE EXAMINED TISSUE ON MESOTHELIOMA
28 CASES OVER 4,000 CASES NOW. THEY'VE BEEN IN A SETTING, SOME
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6022

1 OF SURGICAL PATHOLOGY, BIOPSIES DONE, EITHER AS AN OUTPATIENT
2 OR IN THE OPERATING ROOM.
3 IT'S ALSO INVOLVED ABOUT 400 AUTOPSIES I HAVE
4 PERFORMED ON PATIENTS WITH MESOTHELIOMA.
5 A COUPLE OF OTHER THOUSAND CASES THAT I'VE SEEN
6 THAT HAVE BEEN SENT TO ME EITHER BY ATTORNEYS OR OTHER
7 PATHOLOGISTS WHO WANT MY OPINION ON A CASE.
8 Q. HAVE YOU GOTTEN A CHANCE TO SEE LOTS OF TISSUE
9 TAKEN OUT OF THE LUNGS OF PEOPLE THAT HAVE LUNG CANCER?
10 A. YES.
11 Q. DO YOU WANT TO GIVE US A BALLPARK ON THAT?
12 A. OH, PROBABLY 10- TO 12,000 CASES.
13 Q. ARE THERE DIFFERENT KINDS OF LUNG CANCER?
14 A. THERE ARE. THERE ACTUALLY ARE NUMEROUS KINDS
15 OF LUNG CANCER. IT TURNS OUT THAT THERE ARE FOUR MAJOR TYPES
16 THAT COMPRISE PROBABLY ABOUT 95 TO 98 PERCENT OF ALL LUNG
17 CANCERS.
18 Q. WHAT ARE THEY?
19 A. THE MOST COMMON IS CALLED ADENOCARCINOMA.
20 NEXT MOST COMMON IS CALLED SQUAMOUS CARCINOMA.
21 THE THIRD MOST COMMON IS CALLED SMALL CELL LUNG
22 CANCER.
23 AND THE LEAST COMMON, WHICH MAKES UP ABOUT
24 10 TO 12 PERCENT, IS CALLED LARGE CELL UNDIFFERENTIATED
25 CARCINOMA.
26 Q. HOW MANY ADENOCARCINOMAS DO YOU THINK YOU'VE
27 LOOKED AT PATHOLOGICALLY OVER YOUR 20 YEARS OR SO OF DOING
28 THIS?
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6023

1 A. PROBABLY SOMEWHERE BETWEEN 5- TO 7,000. THAT
2 IS CURRENTLY THE MOST COMMON LUNG CANCER THAT EXISTS IN
3 HUMANS IN THE UNITED STATES AND MANY OTHER PARTS OF THE WORLD
4 AND HAS BEEN SO FOR PROBABLY THE LAST TEN YEARS.
5 Q. DID YOU LOOK AT MR. RELLER'S PATHOLOGY THAT
6 WERE TAKEN OUT OF HIS CHEST?
7 A. YES.
8 Q. DOES HE HAVE MESOTHELIOMA?
9 A. NO.
10 Q. DOES HE HAVE ADENOCARCINOMA?
11 A. YES.
12 Q. DOES HE HAVE A SUBSET OF ADENOCARCINOMA?
13 A. YES.
14 Q. WHAT'S IT CALLED?
15 BEFORE YOU ANSWER, I BET WE COULD ALL GUESS.
16 DOES IT START WITH A "P"?
17 A. YES.
18 Q. WHAT IS HIS SUBSET OF ADENOCARCINOMA?
19 A. HE HAS VERY RARE TYPE OF PRIMARY LUNG CANCER
20 CALLED PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA.
21 Q. FOR A REASONABLE MEDICAL PROBABILITY, WAS
22 MR. RELLER'S PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA CAUSED BY
23 SMOKING CIGARETTES?
24 A. YES.
25 Q. FOR A REASONABLE MEDICAL PROBABILITY, WAS
26 MR. RELLER'S PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA NOT CAUSED
27 BY ASBESTOS?
28 A. YES.

1 Q. WHERE DID YOU GO SCHOOL?
2 TELL US, PLEASE, COLLEGE, MED SCHOOL, AND
3 FELLOWSHIP OR RESIDENCY, THAT KIND OF THING.

4 A. I WENT TO UNDERGRADUATE IN THE EASTERN PART OF
5 THE STATE OF WASHINGTON, CLOSE TO SPOKANE, AT AN INSTITUTION
6 CALLED EASTERN WASHINGTON STATE UNIVERSITY FROM 1961 TO 1965
7 AND GRADUATED WITH A BA DEGREE IN CHEMISTRY.

8 I THEN ATTENDED THE UNIVERSITY OF WASHINGTON
9 SCHOOL OF MEDICINE IN SEATTLE FROM 1965 TO 1969. I GRADUATED
10 WITH AN M.D. DEGREE.

11 I DID A STRAIGHT PATHOLOGY INTERNSHIP AT THE
12 UNIVERSITY HOSPITAL IN SEATTLE FROM JULY OF 1969 THROUGH
13 JUNE OF 1970.

14 I THEN ENTERED THE UNIVERSITY OF WASHINGTON
15 AFFILIATED RESIDENCY PROGRAM AND WAS A RESIDENT IN PATHOLOGY
16 FROM JULY OF 1970 THROUGH SEPTEMBER OF 1973.

17 Q. FOR TWO OF THOSE THREE YEARS, WERE YOU CHIEF
18 RESIDENT OF PATHOLOGY THERE?

19 A. I WAS, YES.

20 Q. AND DURING YOUR TIME THERE AS A RESIDENT, I
21 GUESS THAT'S -- WHAT'S THAT LIKE, A GRADUATE STUDENT?

22 A. YES.

23 Q. DID YOU GET SOME AWARDS AND HONORS AND PATS ON
24 THE BACK AND ACCOLADES THERE?

25 A. YEAH, A FEW.

26 Q. HAVE YOU TAUGHT PATHOLOGY?

27 A. YES.

28 Q. WHEN AND WHERE?

1 A. THE FIRST JOB WAS AT THE UNIVERSITY OF UTAH
2 SCHOOL OF MEDICINE FROM SEPTEMBER OF 1973 THROUGH AUGUST OF
3 1975. I TAUGHT MEDICAL STUDENTS, PATHOLOGY RESIDENTS,
4 INTERNAL MEDICINE RESIDENTS AND SURGERY RESIDENTS.

5 WHEN I WORKED AT VIRGINIA MASON MEDICAL CENTER
6 IN SEATTLE, WHICH WAS MY NEXT JOB, I WAS THERE FROM
7 SEPTEMBER OF 1975 THROUGH JANUARY OF 1989. I TAUGHT
8 PATHOLOGY RESIDENTS WHO WERE RESIDENTS AT VIRGINIA MASON. I
9 THOUGHT SURGERY RESIDENTS AND INTERNAL RESIDENTS AT VIRGINIA
10 MASON.

11 FOR ABOUT THREE YEARS IN THE 1990'S, I TAUGHT
12 MEDICAL SCHOOLS AT THE UNIVERSITY OF WASHINGTON SCHOOL OF
13 MEDICINE, BASIC PATHOLOGY.

14 AND FOR TEN YEARS, MYSELF AND ANOTHER
15 PATHOLOGIST PUT ON A COURSE FOR OTHER PATHOLOGISTS THAT DEALT
16 WITH LUNG DISEASE, AND THE SOCIETY WAS THE AMERICAN SOCIETY
17 OF CLINICAL PATHOLOGY.

18 Q. SO WHAT DOES THAT MEAN, THAT YOU PUT ON A
19 COURSE FOR TEN YEARS THAT TAUGHT OTHER PATHOLOGISTS ABOUT
20 LUNG DISEASE?

21 A. WELL, THERE'S COURSES GIVEN BY VARIOUS
22 SOCIETIES TO TRY TO KEEP THE VARIOUS PATHOLOGISTS WHO ATTEND
23 OR MEMBERS OF THOSE SOCIETIES UP TO DATE AND KNOWLEDGEABLE IN
24 VARIOUS AREAS OF PATHOLOGY. AND THAT WAS THE PURPOSE OF
25 THOSE COURSES.

26 AND MY PART OF THE COURSE WAS TO TEACH THE
27 OTHER PATHOLOGISTS THINGS ABOUT ASBESTOS-RELATED LUNG
28 DISEASE, LUNG CANCER, MESOTHELIOMA, AND A COUPLE OF RARE
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1 DISEASES, ONE CALLED HYPERSENSITIVITY PNEUMONIA. AND ANOTHER

2 ONE CALLED MALIGNANT -- I MEAN LANGERHANS' HISTIOCYTOSIS.
3 Q. WE KNOW THAT ONE.
4 SOME OF THESE WORDS ARE AWFULLY LONG,
5 COMPLICATED WORDS, HUH?
6 A. THEY'RE NOT. THEY'RE KIND OF LONG WORDS, BUT
7 THEY'RE NOT ALL THAT COMPLICATED.
8 LIKE HYPERSENSITIVITY PNEUMONIA IS A
9 NONINFECTIOUS PNEUMONIA CAUSED BY AN ALLERGIC REACTION TO
10 SOME TYPE OF ORGANIC ANTIGEN MALIGNANT HISTOCYTOSIS.
11 UNDERLYING THAT IS IT'S NAMED AFTER A MAN NAMED
12 PAUL LANGERHANS, WHO WAS A GERMAN MEDICAL STUDENT, WHO, AT
13 AGE 18, THERE APPEARED A CELL ON THE SKIN CALLED THE
14 LANGERHANS SCALE, BUT THE DISEASE ACTUALLY REFERS TO A LUNG
15 DISEASE THAT IS CAUSED BY CIGARETTE SMOKING THAT WILL GO AWAY
16 IF PEOPLE STOP SMOKING.
17 Q. DO YOU PRACTICE MEDICINE NOW?
18 A. YES.
19 Q. WHERE?
20 A. I PRACTICE IN A SMALL CITY CLOSE TO SEATTLE
21 CALLED BREMERTON, WASHINGTON.
22 Q. WHY DON'T YOU GIVE THE JURY AN IDEA OF WHAT
23 BREMERTON, WASHINGTON'S LIKE.
24 IS IT LIKE A COW TOWN, OR INDUSTRIAL TOWN, OR
25 SHIPYARD TOWN?
26 NONE OF THE ABOVE?
27 ALL OF ABOVE?
28 A. SHIPYARD TOWN, WORKING CLASS-TYPE OF AREA. A
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6027
1 SIGNIFICANT NUMBER OF PEOPLE THERE ARE IN THE SERVICE,
2 PRIMARILY IN THE NAVY. WE HAVE SEVERAL CARRIERS DOCKED IN
3 BREMERTON. U.S.S. MISSOURI WAS THERE FOR A PERIOD OF MANY
4 YEARS BEFORE IT WAS TOWED TO HAWAII.
5 THE POPULACE IN THAT AREA ARE BASICALLY GOOD,
6 HARD-WORKING PEOPLE. UNFORTUNATELY, THERE'S A VERY HIGH
7 INCIDENCE OF LUNG DISEASE THERE, INCLUDING LUNG CANCER AND
8 MESOTHELIOMA. AND THERE'S ALSO A VERY HIGH INCIDENCE OF
9 INTERSTITIAL LUNG DISEASE IN BREMERTON.
10 Q. HOW LONG HAVE YOU PRACTICED IN BREMERTON,
11 PLEASE?
12 A. 14 YEARS.
13 Q. ARE YOU AFFILIATED WITH ONE OF THE HOSPITALS IN
14 THE BREMERTON AREA?
15 A. YES. I'M THE STAFF PATHOLOGIST AT THE HOSPITAL
16 THERE, WHICH IS CALLED HARRISON MEMORIAL HOSPITAL.
17 Q. THANKS.
18 I WANT TO TALK ABOUT SOME OF YOUR OTHER
19 QUALIFICATIONS. GO FURTHER.
20 DO YOU WRITE?
21 A. YES.
22 Q. DO YOU CONSIDER YOURSELF TO BE AN ACADEMIC
23 MEDICINE PERSON?
24 A. EVEN THOUGH I'M IN A PRIVATE SETTING, YES.
25 Q. SO I USE THE TERM. YOU DEFINE IT.
26 ACADEMIC MEDICINE?
27 A. WELL, I WOULD DEFINE IT AS A PERSON IN MEDICINE
28 WHO'S STILL VERY INTERESTED IN THE -- MAYBE THE INTELLECTUAL
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6028
1 PART OF MEDICINE AND KIND OF CAUSES, MECHANISMS OF DISEASES,
2 AND THE STUDY OF THOSE CAUSES AND MECHANISMS, AND ONE WHO
3 WRITES ABOUT THAT TYPE OF MATERIAL.
4 Q. HAVE YOU WRITTEN ANY BOOKS?

5 A. YES.
6 Q. ON WHAT?
7 A. I'VE WRITTEN -- OR I'M CO-EDITOR ON A BOOK
8 TITLED, PULMONARY PATHOLOGY, WHICH IS A 1650-PAGE TEXTBOOK
9 THAT DEALS WITH ALL TYPES OF DISEASES THAT OCCUR IN THE LUNG
10 AND CHEST CAVITY, AND IN THAT BOOK, I WROTE FIVE CHAPTERS
11 MYSELF, AND I CO-WROTE A CHAPTER WITH A PERSON I DO RESEARCH
12 WITH IN TEXAS BY THE NAME OF RONALD F. DODSON, D-O-D-S-O-N,
13 WHO'S THE CHAIRMAN OF CELL BIOLOGY AND ENVIRONMENTAL SCIENCES
14 AT THE UNIVERSITY OF TEXAS AT TYLER. THAT CHAPTER IS CALLED
15 ASBESTOS.
16 I'VE ALSO BEEN A CO-EDITOR ON ANOTHER BOOK
17 THAT'S CALLED PULMONARY PATHOLOGY TUMORS, WHICH DEALS WITH
18 THE TUMORS THAT OCCUR IN THE LUNG AND CHEST CAVITIES. AND
19 THE OTHER CO-EDITORS AND CO-AUTHORS IN THAT BOOK ARE
20 DAVID DAIL, D-A-I-L, AND DR. THOMAS COLBY, C-O-L-B-Y.
21 I'VE ALSO WRITTEN CHAPTERS IN OR BOOKS FOR
22 VARIOUS PEOPLE. I'VE WRITTEN ABOUT 50 CHAPTERS IN THE LATE
23 '80S. THE CHAPTER I WROTE WAS IN A BOOK CALLED, "DIAGNOSTIC
24 IMMUNOHISTOCHEMISTRY" AND WAS EDITED BY A DR. DAVID A. DABBS,
25 WHO'S A PATHOLOGIST AT THE UNIVERSITY OF PITTSBURGH.
26 AND I WROTE THE CHAPTER ON THE
27 IMMUNOHISTOCHEMICAL FEATURES OF LUNG AND PLEURAL TUMORS.
28 Q. THANK YOU.
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1 SCIENTIFIC PAPERS, PEER-REVIEWED SCIENTIFIC
2 PAPERS, DID YOU WRITE ANY OF THOSE?
3 A. ABOUT 110 OF THOSE. THE LATEST ONE THAT WAS
4 PUBLISHED WAS TWO MONTHS AGO, IN AMERICAN JOURNAL OF
5 INDUSTRIAL MEDICINE ON MESOTHELIOMA IN WOMEN.
6 ONE PRIOR TO THAT WAS PUBLISHED IN THE AMERICAN
7 JOURNAL OF SURGICAL PATHOLOGY ON A RARE TYPE OF MESOTHELIOMA,
8 CALLED A WELL-DIFFERENTIATED PAPILLARY EPITHELIAL
9 MESOTHELIOMA.
10 THE ONE PRIOR TO THAT HAD TO DO WITH ANALYSIS
11 OF WHAT ARE CALLED CARCINOID TUMORS, WHICH ARE PRIMARY TUMORS
12 WHICH OCCUR IN THE LUNG THAT ARE USUALLY BENIGN.
13 Q. THANK YOU. I'M ALMOST THERE NOW.
14 IS ALL OF YOUR WRITING HAVING TO DO WITH
15 DISEASES OF THE CHEST?
16 A. NOT ALL OF IT, BUT MOST OF IT.
17 Q. DO YOU KNOW WHAT THE -- I HOPE I'M PRONOUNCING
18 THIS RIGHT -- CARET STUDY IS?
19 THE COURT: SPELL IT.
20 MR. PIUZE: C A-R-E-T.
21 THE WITNESS: YES.
22 Q. BY MR. PIUZE: TELL US, PLEASE.
23 A. IT WAS A TRIAL THAT OCCURRED IN SEVERAL CITIES
24 IN THE UNITED STATES, RUN OUT OF THE FRED HUTCHINSON CANCER
25 RESEARCH CENTER IN SEATTLE AND THE GOAL WAS TO DETERMINE
26 WHETHER TWO ANTIOXIDANT VITAMINS, CIS, RETINOIC ACID, AND
27 VITAMIN A PREVENTED THE DEVELOPMENT OF LUNG CANCER AND/OR
28 MESOTHELIOMA IN INDIVIDUALS WHO WERE EITHER SMOKERS OR WHO
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1 WERE EXPOSED TO ASBESTOS.
2 THE COURT: DO YOU NEED THE SPELLING OF ANY OF
3 THESE?
4 Q. BY MR. PIUZE: WERE YOU INVOLVED WITH THAT?
5 A. YES. I WAS THE CHAIRMAN OF THE PATHOLOGY
6 SECTION OF THAT STUDY AND MADE SURE THAT ALL OF THE PATIENTS
7 WHO WERE ENTERED INTO THE TREATMENT PROTOCOLS WERE ACCURATELY

8 DIAGNOSED WITH RESPECT TO WHAT TYPE OF CANCER THEY HAD AND
9 WHAT WAS THE ANATOMIC STAGE OF THE CANCER.

10 Q. WERE YOU ON A PANEL FOR THE WORLD HEALTH
11 ORGANIZATION HAVING TO DO WITH PULMONARY PATHOLOGY?

12 A. YES. AND I STILL AM.

13 Q. EXPLAIN, PLEASE.

14 A. THE WORLD HEALTH ORGANIZATION'S MAJOR GOAL IS
15 TO IMPROVE THE HEALTH OF ALL PEOPLE IN THE WORLD. AND THERE
16 ARE MANY DIFFERENT PARTS OF THE WORLD HEALTH ORGANIZATION.

17 ONE PART OF IT IS TO PROVIDE UP-TO-DATE
18 INFORMATION TO PATHOLOGISTS AND OTHER DOCTORS WITH RESPECT TO
19 CURRENT CLASSIFICATIONS OF VARIOUS TYPES OF CANCERS. AND A
20 GROUP OF US STARTING, OH, PROBABLY ABOUT 1995, 1996, WERE
21 ASKED BY THE WORLD HEALTH ORGANIZATION TO WRITE A NEW BOOK ON
22 THE CURRENT CLASSIFICATION OF LUNG CANCERS IN MESOTHELIOMA.
23 AND I WAS ON THE COMMITTEE THAT DID THAT, AND THAT BOOK WAS
24 PUBLISHED BY A COMPANY CALLED SPRINGER, S-P-R-I-N-G-E-R, IN
25 1999, AND OUR NEXT MEETING IS GOING TO BE NEXT MONTH IN
26 VANCOUVER, BRITISH COLUMBIA.

27 Q. IS IT A BIG DEAL?

28 A. WELL, IT'S A LOT OF FUN. IT'S SOMETHING THAT
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6031

1 YOU CAN DO THAT YOU MEET A LOT OF FRIENDS THAT DO THE SAME
2 THING, ARE INTERESTED IN THE SAME THING. SO IT'S KIND OF A
3 BIG DEAL.

4 Q. I ASKED A REALLY VAGUE AND AMBIGUOUS, BAD
5 QUESTION, AND I'M GOING CHASTISE MYSELF FOR IT.

6 IS THAT A PRESTIGIOUS AND HONORIS THING TO BE
7 ASKED TO DO?

8 A. YES.

9 Q. LAST. DO YOU KNOW WHAT THE U.S. AND CANADIAN
10 MESOTHELIOMA PANEL IS?

11 A. I DO.

12 Q. WHAT?

13 A. IT IS A GROUP OF 12 PATHOLOGISTS, 10 IN THE
14 UNITED STATES, ONE IN CANADA, AND ONE IN WALES, GREAT
15 BRITAIN, THAT WILL SERVE AS AN EXPERT PANEL TO REVIEW CASES
16 SENT TO US BY OTHER PATHOLOGISTS OR OTHER DOCTORS OF
17 SUSPECTED MESOTHELIOMA AT NO CHARGE.

18 AND THE REASON THE PANEL EXISTS IS BECAUSE
19 MESOTHELIOMA IS A RELATIVELY RARE TYPE OF CANCER, AND MANY
20 PATHOLOGISTS HAVE NOT HAD THE OPPORTUNITY OF SEEING VERY MANY
21 CASES.

22 Q. WHO PUTS YOU THERE?

23 A. I WAS INVITED TO JOIN 14 YEARS AGO BY
24 DR. TOM COLBY, WHO'S A PATHOLOGIST AT MAYO CLINIC.

25 Q. SO WHEN DOCTORS -- WHERE, JUST IN THE UNITED
26 STATES AND CANADA?

27 A. BASICALLY, IT'S ALL OVER. ANYBODY WHO -- THE
28 PEOPLE ON THE PANEL ARE PRIMARILY U.S. AND CANADA, WITH ONE
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1 IN WALES, GREAT BRITAIN.

2 Q. RIGHT.

3 A. AND ANYBODY WHO WANTS TO SEND US A CASE FROM
4 ANY PART OF THE WORLD CAN DO SO, AND WE WILL EVALUATE IT.

5 Q. OKAY. SO IF SOME DOCTOR IN HUNGARY, URUGUAY,
6 OR INDONESIA, JUST TO PICK THREE AT RANDOM, HAS A QUESTION
7 ABOUT WHETHER THEIR PATIENT TRULY HAS MESOTHELIOMA, THEY CAN
8 SEND IT TO THIS PANEL AND YOU AND THE OTHERS WILL REVIEW IT
9 FOR FREE AND TELL THEM WHAT THEY'VE GOT?

10 A. YES.

11 Q. OKAY. THANKS.
12 NOW, DID YOU REVIEW MR. RELLER'S STUFF FOR FREE
13 FOR ME?
14 A. NO.
15 Q. CHARGED ME?
16 A. I DID.
17 Q. WHAT IS IT THAT YOU HAVE REVIEWED, PLEASE?
18 A. I REVIEWED PATHOLOGY MATERIALS. AND WHAT THEY
19 INCLUDED WERE CYTOLOGIC SPECIMENS MADE OF SPUTUM AND CYTOLOGY
20 MADE OF PLEURAL FLUID THAT WAS REMOVED FROM HIS CHEST CAVITY,
21 AND PLEURAL BIOPSIES THAT WERE TAKEN, AND IN THE PLEURAL
22 BIOPSY GROUP, THERE WAS ONE SPECIMEN THAT REPRESENTED A LUNG
23 BIOPSY.
24 Q. YOU USED SEVERAL WORDS THAT ARE -- YOU DO EVERY
25 SINGLE DAY OR MEANT, BUT WE DON'T KNOW ABOUT.
26 WHAT'S CYTOLOGY?
27 A. CYTOLOGY MEANS THE STUDY OF CELLS. AND
28 PROBABLY MOST PEOPLE WOULD BE FAMILIAR WITH A PAP SMEAR IN
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6033
1 WOMEN, WHICH IS A CYTOLOGY OF THE CERVIX TO DETERMINE WHETHER
2 THERE ARE ANY ABNORMAL CELLS BY LOOKING AT SMEARS OR VARIOUS
3 OTHER TYPES OF PREPARATION. AND YOU CAN DO CYTOLOGIC
4 EVALUATIONS ON ALL TYPES OF THINGS.
5 ANOTHER COMMON THING THAT CYTOLOGY HAS DONE ON
6 SPUTUM IS TO IDENTIFY POTENTIAL CANCER CELLS, PRIMARILY
7 PEOPLE WHO HAVE A HISTORY OF CIGARETTE SMOKING.
8 Q. WHAT'S PLEURAL?
9 I HEARD PLEURAL FLUID. WHAT IS IT?
10 A. WELL, IN A VARIETY OF DISEASES, PRIMARILY
11 MESOTHELIOMA, BUT ALSO A BUNCH OF OTHER DISEASES, PEOPLE CAN
12 DEVELOP WHAT'S CALLED A PLEURAL OR FUSION, AND WHAT THAT
13 MEANS IS THAT THEY DEVELOP FLUID PRESENT BETWEEN THEIR LUNG,
14 WHICH IS LINED BY WHAT'S CALLED THE VISCERAL PLEURA, AND THE
15 CHEST WALL, WHICH IS LINED BY PARIETAL PLEURA, AND THAT FLUID
16 GETS IN THERE AND USUALLY COMPRESSES THE LUNG, SO THE LUNG
17 GETS COMPRESSED TO THE POINT THAT IT DOES NOT OXYGENATE THE
18 BLOOD AS WELL AS IT COULD IF IT WAS NOT COMPRESSED.
19 AND PEOPLE USUALLY COME TO A DOCTOR BECAUSE
20 THEY'RE SHORT OF BREATH ON EXERTION. A CHEST RADIOGRAPH IS
21 EVENTUALLY TAKEN. THE CHEST RADIOGRAPH WILL SHOW THE FLUID
22 THAT WILL APPEAR ON THE RADIOGRAPH AS WHITE MATERIAL, AND
23 THEN WHAT HAPPENS IS THEY, THE PATIENT, WILL USUALLY GO TO A
24 PULMONARY INTERNAL MEDICINE DOCTOR, A PULMONOLOGIST, AND THAT
25 DOCTOR WILL INSERT A NEEDLE BETWEEN THE RIBS INTO THE CHEST
26 WALL AND INTO THE PLEURAL CAVITY AND THEN WILL SUCK OUT THE
27 FLUID.
28 AND WHAT THAT DOES IS RELIEVE THE PATIENT'S
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6034
1 SYMPTOMS AND SHORTNESS OF BREATH. AND THAT FLUID IS THEN
2 AUTOMATICALLY SENT TO A PATHOLOGIST LABORATORY, LIKE MINE,
3 FOR PSYCHOLOGIC EVALUATION. IT'S ALSO SENT TO THE CLINICAL
4 LABORATORY TO DO DETERMINATIONS OF SUGAR, PROTEIN
5 CONCENTRATION, BLOOD CONCENTRATION, AND A CONCENTRATION OF AN
6 ENZYME CALLED LACTIC DEHYDROGENASE. AND THEN ANOTHER PART OF
7 THE SPECIMEN IS SENT TO MICROBIOLOGY LABORATORIES TO CULTURE,
8 SEE IF THERE ARE ANY INFECTIOUS AGENTS IN THE FLUID.
9 Q. THE MATERIAL FROM MR. RELLER THAT YOU EXAMINED,
10 FIRST OF ALL, WHAT HOSPITAL DID IT COME FROM?
11 A. THE DANIEL FREEMAN HOSPITAL.
12 Q. AND WHERE WITHIN MR. RELLER DID IT COME FROM?
13 A. IT CAME FROM HIS RIGHT PLEURA. I THINK IT WAS

14 HIS RIGHT. ANYWAY, IT CAME FROM ONE SIDE OF HIS PLEURA.
15 LET ME JUST CHECK TO MAKE SURE IT WAS RIGHT
16 VERSUS LEFT.
17 IT WAS HIS LEFT PLEURA -- EXCUSE ME -- IT WAS
18 HIS LEFT PLEURA, WHICH WOULD BE THAT SIDE. THAT'S THE SIDE
19 THE PLEURA FLUID CAME FROM, THAT'S THE SIDE THE PLEURAL
20 BIOPSIES CAME FROM, AND THAT'S THE SIDE THAT THE OPEN LUNG
21 BIOPSY CAME FROM.
22 Q. WHAT'S A PLEURAL, P-L-E-U-R A-L?
23 A. RIGHT. THE PLEURA IS AN ANATOMIC STRUCTURE,
24 AND WHEN THE BODY DEVELOPS VERY EARLY IN UTERO, THERE'S A
25 SINGLE CAVITY THAT IS CALLED THE CELOMIC, C-E-L-O-M-I-C
26 CAVITY, AND THAT CAVITY IS LINED BY A SPECIALIZED TYPE OF
27 TISSUE THAT IS REFERRED TO AS SEROSA, S-E-R-O-S A. AND AS
28 THE BODY DEVELOPS, THE SINGLE CAVITY IS DIVIDED INTO THREE
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1 CAVITIES:
2 THE ABDOMINAL CAVITY, WHICH IS SCIENTIFICALLY
3 CALLED THE PERITONEAL CAVITY;
4 THE CHEST CAVITY IS SCIENTIFICALLY CALLED THE
5 PLEURAL CAVITY;
6 AND THE HEART CAVITY, WHICH IS SCIENTIFICALLY
7 REFERRED TO AS THE PERICARDIAL CAVITY.
8 AND ALL OF THOSE CAVITIES ARE LINED BY THIS
9 SEROSAL TISSUE THAT IS MADE UP OF VERY SPECIFIC CELLS.
10 Q. OKAY. ANYWAY, HOW DO THE DOCTORS GET THE
11 PLEURAL FLUID?
12 A. THEY CAN GET THE PLEURAL FLUID USUALLY BY THE
13 THORACOCENTESIS, STICKING IN A NEEDLE. BUT WHEN THEY WENT TO
14 GET THE PLEURAL BIOPSY TISSUE, THEY USUALLY USED A TECHNIQUE
15 CALLED VATS, WHICH STANDS FOR VIDEO ASSISTED THORASCOPIC
16 SURGERY, WHICH IS A TECHNIQUE WHERE YOU CAN MAKE LITTLE
17 INCISIONS BETWEEN THE RIBS, AND USUALLY THEY MAKE FOUR PORTS,
18 AND THEY CAN PUT VARIOUS CATHETERS AND STRUCTURES IN THERE.
19 AND ONE OF THE THINGS THEY PUT IN THERE IS A
20 MONITOR, OR CATHETER, WHICH IS ATTACHED TO A VIDEO MONITOR
21 WHERE YOU CAN SEE INSIDE THE CHEST.
22 ANOTHER PORT WILL HAVE A SUCTION DEVICE TO SUCK
23 OUT ANY FLUID OR BLOOD.
24 ANOTHER PORT WILL HAVE A PLACE FOR A CAUTERY TO
25 CAUTERIZE ANY VESSELS THAT ARE BLEEDING.
26 AND THEN YOU CAN HAVE ANOTHER PORT TO PUT A
27 BIOPSY FORCEPS IN.
28 AND WHAT THEY DO IS THEY GET IN THERE AND LOOK
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1 AND SEE IF THERE ARE ANY ABNORMALITIES PRESENT. AND THEN
2 THEY WILL TAKE BIOPSIES OF THE PLEURA, OR THE LUNG, DEPENDING
3 ON WHAT THE CLINICAL SITUATION IS.
4 Q. THANK YOU.
5 DID YOU SEE PATHOLOGY REPORTS FROM DANIEL
6 FREEMAN HOSPITAL?
7 A. I DID.
8 Q. DO YOU KNOW WHAT A DIFFERENTIAL DIAGNOSIS IS?
9 A. SURE.
10 Q. SURE. WHAT IS IT?
11 A. WELL, IN A CLINICAL TEXT, FOR CLINICAL DOCTORS,
12 LIKE INTERNISTS, A FAMILY DOCTOR, IT'S THE POSSIBILITIES OF A
13 CERTAIN DISEASE PROCESS BASED ON YOUR SYMPTOMS.
14 LIKE IF A PERSON COMES IN WITH SEVERE CHEST
15 PAIN, THAT MIGHT BE A HEART ATTACK. IT MIGHT BE A LUNG
16 TUMOR. IT MIGHT BE SOME TYPE OF RARE DISEASE CAUSED BY SOME

17 TYPE OF GENETIC ABNORMALITY.
18 AND THOSE POSSIBILITIES REPRESENT THE
19 DIFFERENTIAL DIAGNOSIS, WHICH MEANS THOSE ARE THE
20 POSSIBILITIES BASED ON YOUR SYMPTOMS.
21 IN THE CASE OF PATHOLOGY, IT'S A LITTLE
22 DIFFERENT. IT USUALLY REFERS TO WHEN WE GET A BIOPSY
23 SPECIMEN AND LOOK AT THE TISSUE THAT HAS BEEN CUT VERY THINLY
24 AND PUT ON GLASS SLIDES THROUGH MICROSCOPE, WE SAY WE SEE A
25 CANCER, AND THE CANCER'S COMPOSED OF CELLS THAT HAVE CERTAIN
26 SIZES AND SHAPES AND ARE FORMING CERTAIN STRUCTURES, AND IT
27 TURNS OUT THAT THERE ARE A VARIETY OF CANCERS THAT COULD LOOK
28 FAIRLY SIMILAR.
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1 SO WHAT A PATHOLOGIST WOULD DO, WOULD BE TO
2 MAKE A DIFFERENTIAL DIAGNOSIS OF WHAT THE POSSIBILITIES WOULD
3 BE BY LOOKING AT THE ROUTINE SLIDES THROUGH AN ORDINARY LIGHT
4 MICROSCOPE.

5 Q. WHEN WE COME BACK FROM OUR BREAK, ARE YOU GOING
6 TO TELL US WHAT WE SAW?

7 A. I AM.

8 Q. THANKS.

9 THE COURT: LADIES AND GENTLEMEN, YOU'RE ADMONISHED
10 THAT IT'S YOUR DUTY NOT TO CONVERSE AMONG YOURSELVES OR WITH
11 ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THIS TRIAL OR TO
12 FORM OR EXPRESS ANY OPINION THEREON UNTIL THE CAUSE IS
13 FINALLY SUBMITTED TO YOU.

14 I'LL SEE YOU -- EVERYBODY BACK AT 2 O'CLOCK.
15 THAT'S 2 O'CLOCK TODAY.

16
17 (RECESS.)
18

19 THE COURT: BACK IN THE MATTER OF RELLER VERSUS
20 PHILIP MORRIS, BC 261796.

21 THE RECORD SHOULD REFLECT THAT ALL TWELVE
22 JURORS, THE FOUR ALTERNATES ARE PRESENT.

23 ALL COUNSEL PREVIOUSLY STATED ARE PRESENT.

24 THE WITNESS IS PRESENT IN THE WITNESS STAND.

25 DR. HAMMAR, YOU'RE STILL UNDER OATH.

26 THE CLOCK IS TICKING.

27 MR. PIUZE: YOUR HONOR, CAN YOU PLEASE TELL ME THE
28 NEXT COURT EXHIBIT NUMBER?

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1 THE COURT: SURE. THE NEXT ONE I HAVE AS 32. SO
2 WHATEVER YOU'RE GOING TO NUMBER IS 32.

3 MR. PIUZE: OKAY.

4 THE COURT: AND 32 IS GOING TO BE A WHO OR A WHAT?

5 MR. PIUZE: IT'S A DANIEL FREEMAN HOSPITAL DEPARTMENT
6 OF PATHOLOGY REPORT DATED 11-15-00.

7 THE COURT: OKAY. 32 FOR IDENTIFICATION IS A DANIEL
8 FREEMAN HOSPITAL PATHOLOGY REPORT DATED NOVEMBER 15TH, 2000

9
10 (I.D. 32 - FREEMAN HOSPITAL REPORT, 11-15-02)
11

12 Q. BY MR. PIUZE: SO HAVE YOU SEEN THIS BEFORE?

13 A. YES.

14 Q. IS THIS OF THE DOCUMENTATION THAT I PROVIDED TO
15 YOU?

16 A. YES.

17 Q. OKAY. WHAT IS THIS?

18 I'M GOING TO ASK YOU TO TALK ABOUT THE
19 PREOPERATIVE DIAGNOSIS, THEN WHEN YOU'RE DONE, THE GROSS

20 EXAMINATION, AND THEN THE MICROSCOPIC EXAMINATION.
21 OKAY?
22 A. OKAY.
23 Q. OKAY. WHAT WAS THE PREOP DIAGNOSIS?
24 A. PNEUMONIA.
25 Q. NOT LUNG CANCER, NOT MESOTHELIOMA, NOTHING LIKE
26 THAT, JUST PNEUMONIA?
27 A. JUST PNEUMONIA.
28 Q. WHAT IS A GROSS EXAMINATION?

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1 A. A GROSS EXAMINATION IS THE EXAMINATION OF A
2 SPECIMEN THAT YOU SEE OR DESCRIBE BY LOOKING AT IT WITH YOUR
3 OWN EYES.

4 AND IN THE CASE OF CYTOLOGY SPECIMENS, IT'S
5 USUALLY A CERTAIN VOLUME OF FLUID THAT HAS A CERTAIN
6 CONSISTENCY OR COLOR. IN THAT REPORT, YOU CAN SEE THAT THEY
7 SAID THERE WAS 1 CC OF GRAYISH FLUID, AND THEY SAID IT WAS
8 SUBMITTED FOR A CELL BLOCK AND SMEAR.

9 THE COURT: ARE YOU OKAY?

10 DO YOU NEED SOME WATER?

11 ALTERNATE JUROR GRIEGO-GILMORE: I'VE JUST GOT A
12 COLD.

13 Q. BY MR. PIUZE: I DON'T THINK IT WAS ANYTHING
14 YOU SAID, DOCTOR.

15 SPUTUM. SPUTUM IS WHAT?

16 A. SPUTUM IS A MATERIAL THAT COMES FROM YOUR
17 MOUTH. IT'S A COMBINATION OF SALIVA AND LOWER RESPIRATORY
18 TRACT MATERIAL.

19 Q. IT SAYS, SUBMITTED FOR CELL BLOCK AND SMEARS.
20 WHAT'S CELL BLOCK, AND WHAT'S SMEARS?

21 A. OKAY. SMEARS WOULD BE -- IS THAT WHERE YOU'D
22 TAKE A SAMPLE OF SPUTUM. IN THIS CASE, IT WAS 1 CC. AND YOU
23 USUALLY SHAKE IT ALL UP, OR GET IT SOMEHOW DISPERSED. THEN
24 YOU'D TAKE A CERTAIN AMOUNT OF THAT, USUALLY A SMALL DROP,
25 PUT IT ONTO A GLASS SLIDE, AND THEN YOU WOULD TAKE ANOTHER
26 GLASS SLIDE AND YOU'D SMEAR IT AROUND. YOU'D USUALLY FIX IT
27 WITH ALCOHOL, AND THEN YOU WOULD STAIN IT IN A VARIETY OF
28 DIFFERENT WAYS.

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1 THE CELL BLOCK SPECIMEN, YOU WOULD USUALLY TAKE
2 THE FLUID AND YOU'D CENTRIFUGE IT. PUT IT IN A CENTRIFUGE,
3 SPIN IT DOWN. AND AT THE BOTTOM OF THE CENTRIFUGE TUBE,
4 THERE WOULD BE A PELLET OF MATERIAL, WHICH WOULD INCLUDE THE
5 CELLULAR MATERIAL. YOU WOULD REMOVE THE NONCELLULAR
6 MATERIAL, AND YOU WOULD TAKE THAT CELLULAR MATERIAL AND PUT
7 IT INTO SOME TYPE OF A COAGULUM, WOULD ACTUALLY COAGULATE THE
8 TISSUE, OR PUT THE TISSUE IN THE CENTER, SO COULD YOU
9 ACTUALLY FIX IT IN FORMALIN, F-O-R-M-A-L-I-N, AS IF IT WERE A
10 TISSUE SPECIMEN.

11 AND THAT WOULD BE PUT INTO AN AUTOMATIC TISSUE
12 PROCESSOR, AND THE SPECIMEN WOULD EVENTUALLY BE EMBEDDED
13 WITH WAX, HOT WAX. AND WHEN THE WAX COOLED, IT WOULD FORM
14 A -- WHAT'S CALLED A BLOCK. AND IN THIS CASE, IT'S A CELL
15 BLOCK BECAUSE IT'S A CYTOLOGY SPECIMEN. AND THAT BLOCK WOULD
16 BE PUT INTO A MACHINE CALLED A MICROTOME, M-I-C-R-O-T-O-M-E,
17 AND THAT BLOCK WOULD BE VERY SLOWLY ADVANCED AGAINST A VERY
18 SHARP KNIFE.

19 YOU WOULD CUT VERY THIN SECTIONS OF THAT
20 MATERIAL, SPECIFICALLY SECTIONS THAT ARE FIVE MICROMETERS
21 THICK. AND A MICROMETER IS ONE ONE HUNDREDTHS OF A METER, SO
22 VERY, VERY THIN. AND THAT WOULD BE PUT ONTO A GLASS SLIDE.

23 THE WAX WOULD BE MELT IN AN OVEN. AND THEN THE SLIDE WOULD
24 BE PUT THROUGH AN AUTOMATIC TISSUE STAINER.
25 AND IT WOULD STAIN WITH TWO DYES, D-Y-E-S, THAT
26 PATHOLOGISTS LOOK AT. ONE CALLED HEMATOXYLIN,
27 H-E-M-A-T-O-X-Y-L-I-N, AND THE OTHER ONE, EOSIN, E-O-S-I-N,
28 AND THEN I WOULD DO, AS A PATHOLOGIST, WOULD TAKE THAT SLIDE,
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1 PUT IT ON MY MICROSCOPE AND LOOK AT IT, AND THEN I WOULD
2 DESCRIBE WHAT I SAW.

3 Q. THANKS A LOT.
4 THIS PATHOLOGIST THAT DID THIS WHEN DESCRIBING
5 WHAT HE OR SHE SAW, IS THIS THE DESCRIPTION, MICROSCOPIC
6 EXAMINATION?

7 A. IT IS.

8 Q. OKAY. I GUESS WE CAN READ THE WORDS, BUT THEY
9 DON'T MEAN A LOT TO US.

10 SO CAN YOU TRANSLATE IT AND TELL US WHAT THE
11 PATHOLOGIST WAS REPORTING THAT HE OR SHE SAW.

12 A. WHAT THE PATHOLOGIST SAW WERE BASICALLY CELLS
13 FROM THE UPPER AIRWAYS AND SALIVA, AND THEY DID NOT CONTAIN
14 ANY, WHAT ARE CALLED PULMONARY MACROPHAGES, BUT THEY DID NOT
15 SHOW ANY CANCER CELLS.

16 THE PROBLEM HERE IS THAT IT IS AN INADEQUATE
17 SPECIMEN. YOU HAVE AN ADEQUATE SPECIMEN OF SPUTUM. YOU HAVE
18 TO HAVE A CELL PRESENT, CALLED MACROPHAGES, WHICH MEANS YOU
19 HAVE CELLS FROM THE LOWER TRACT. SO THIS IS AN INADEQUATE
20 SPECIMEN. AND IT WOULD NOT BE REALLY SIGNIFICANT ONE WAY OR
21 THE OTHER.

22 Q. OKAY. AND EVEN THOUGH YOU'VE TOLD US IN
23 ADVANCE, NOT SIGNIFICANT, THE DIAGNOSIS BASED ON WHAT THIS
24 PATHOLOGIST REPORTED WAS WHAT?

25 A. NO MALIGNANCY IDENTIFIED, SUPERFICIAL SALIVARY
26 CONTENTS, SPUTUM FOR CYTOLOGY.

27 SO I THINK MOST PULMONOLOGISTS OR CANCER
28 DOCTORS WOULD KNOW THAT THAT IS AN INADEQUATE SPECIMEN, AND A
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1 NEGATIVE TEST IN THIS INSTANCE DOES NOT EXCLUDE THE
2 POSSIBILITY THAT MR. RELLER HAS A CANCER IN HIS LUNG
3 SOMEPLACE.

4 Q. THANK YOU.
5 NOW, I'M GOING TO PUT UP THE NEXT DOCUMENT,
6 WHICH IS 33. IT'S ANOTHER DEPARTMENT OF PATHOLOGY REPORT.
7 SAME HOSPITAL. SAME DATE, BUT BEFORE I ASK YOU TO TALK ABOUT
8 IT --

9 THE COURT: MARKED 33 FOR IDENTIFICATION IS A
10 DEPARTMENT OF PATHOLOGY REPORT DATED 11-15-2000.

11
12 (I.D. 33 - PATH REPORT, 11-15-00)

13
14 Q. BY MR. PIUZE: THE JURY CAN SEE BOTH EXHIBITS,
15 PARTS OF EXHIBITS 32 AND 33, RIGHT NOW, AND I'M POINTING TO A
16 NUMBER ON THE FIRST ONE, 32.

17 WHAT DOES THAT MEAN, RIGHT THERE?

18 A. THAT IS THE ACCESSION NUMBER. AND THE DATE
19 BELOW IT IS THE ACCESSION DATE.

20 SO WHAT THAT MEANS IS THAT THAT IS THE 1,552ND
21 CASE THAT THEY SAW, AT LEAST AT THAT POINT IN TIME, AND SOME
22 HOSPITALS WILL NUMBER THEIR CYTOLOGY SPECIMENS DIFFERENTLY
23 THAN THEY WILL THEIR -- WHAT ARE CALLED SURGICAL PATHOLOGY
24 SPECIMENS.

25 AND I WOULD HAVE TO KNOW WHAT THE PROTOCOL WAS

26 AT THAT HOSPITAL TO TELL YOU IF THAT WAS THE 1,552ND CASE
27 THEY HAD SEEN THAT YEAR, OR WHETHER THAT WAS THE 1,552ND
28 CYTOLOGY SPECIMEN. I PROBABLY WOULD THINK IT WAS THE LATTER,
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1 BECAUSE THEY PROBABLY WOULD HAVE MORE SURGICAL PATHOLOGY
2 CASES THAN THAT BY NOVEMBER OF 2000.

3 Q. OKAY. NOW, I'M POINTING TO A DIFFERENT NUMBER
4 ON EXHIBIT 33. IT'S THE SAME DATE. BUT IT'S A HIGHER
5 NUMBER. IT'S 1552 INSTEAD OF 1547.

6 A. RIGHT.

7 Q. WHAT'S THE SIGNIFICANCE OF THE HIGHER NUMBER?

8 A. JUST THAT IT'S THE NEXT SPECIMEN IN LINE. AND
9 WHAT IT WOULD MEAN IS THAT, GIVEN THAT IT WAS THE SAME DATE,
10 THAT THEY OBTAINED MORE THAN ONE TYPE OF SPECIMEN FROM
11 MR. RELLER. THEY OBTAINED A SPUTUM SPECIMEN, AND THEN THEY
12 ALSO OBTAINED A PLEURAL FLUID SPECIMEN.

13 Q. OKAY. SO YOU'VE ALREADY TOLD US WHAT PLEURAL
14 FLUID IS, RIGHT?

15 A. YES.

16 Q. ALL RIGHT. AND IS THIS PARTICULAR PATH REPORT
17 THAT'S UP IN FRONT OF THE JURY RIGHT NOW OF PLEURAL FLUID?

18 A. IT IS.

19 Q. PREOP DIAGNOSIS IS THE SAME.

20 I'M ASKING YOU TO TAKE A LOOK AT BOTH GROSS
21 EXAMINATION AND MICROSCOPIC EXAMINATION, AND YOU DON'T HAVE
22 TO READ THE WHOLE THING, BUT JUST TELL US WHAT IT IS THAT
23 THIS PATHOLOGIST REPORTS SEEING, PLEASE.

24 A. WELL, WHAT THE SPECIMEN IS, AGAIN, IS PLEURAL
25 FLUID, AND IT'S -- ITS SIGNIFICANCE IN THE GROSS, IN THAT IT
26 WAS 4,000 CC'S OR 4,000 MILLILITERS, THAT WOULD BE
27 APPROXIMATELY A GALLON OF FLUID, THAT'S A LOT OF FLUID. AND
28 THE FACT THAT IT IS IN HEMORRHAGIC, WHICH MEANS IT'S BLOODY,
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1 HAS SOME SIGNIFICANCE BECAUSE BLOODY PLURAL FLUID IS MORE
2 LIKELY TO BE CAUSED BY A MALIGNANCY THAN FLUID THAT IS NOT
3 BLOODY, ALTHOUGH IT'S NOT ABSOLUTE.

4 AND THEN THE MICROSCOPIC EXAMINATION TELLS YOU
5 WHAT THEY SAW IN THAT FLUID. AND THEY DIDN'T SEE ANY
6 MALIGNANT CELLS, WHICH IS THE LAST STATEMENT.

7 THEY DID SEE INFLAMMATORY CELLS AND BLOOD
8 CELLS, AND THEY SAW SOME REACTIVE CELLS, CALLED HISTIOCYTES.
9 HISTIOCYTE MEANS A TISSUE CELL, AND IT'S SYNONYMOUS WITH A
10 TYPE OF CELL CALLED A MACROPHAGE, AND THEN THEY SAID THERE
11 WERE MESOTHELIAL CELLS, AND THE MESOTHELIAL CELLS ARE THE
12 CELLS THAT LINE THE PLEURA.

13 AND THOSE ARE THE CELLS THAT MESOTHELIOMAS ARE
14 DERIVED FROM. BUT THEY DID NOT SEE ANY MALIGNANT CELLS
15 THERE.

16 Q. DOES THE FIRST THING UNDER GROSS EXAMINATION
17 MEAN THAT ALMOST -- WHAT DID YOU SAY, A GALLON?

18 A. A GALLON OF FLUID WAS DRAINED FROM MR. RELLER'S
19 CHEST AREA.

20 Q. OKAY. DO I HAVE MESOTHELIAL CELLS?

21 A. IF YOU HAD AN INFUSION LIKE THIS, YOU WOULD
22 MOST LIKELY HAVE MESOTHELIAL CELLS IN THEM. EVERYBODY HAS
23 MESOTHELIAL CELLS. THE ENTIRE LINING OF THAT CAVITY THAT
24 INITIALLY EXISTS EMBRYOLOGICALLY AS A MOMENT CAVITY IS LINED
25 BY MESOTHELIAL CELLS AND THAT'S -- YOU CAN GET MESOTHELIOMAS
26 IN THE CHEST, THE ABDOMEN, AND THE HEART, BECAUSE IT'S
27 EXACTLY THE SAME TYPE OF TISSUE.

28 BUT ALMOST EVERYBODY WHO WOULD HAVE AN INFUSION

1 OF THAT VOLUME WOULD HAVE MESOTHELIAL CELLS IN IT.

2 MR. PIUZE: HERE'S 34.

3 THE COURT: 34 FOR IDENTIFICATION. WHAT IS 34?

4 MR. PIUZE: 34 IS DANIEL FREEMAN HOSPITAL DEPARTMENT
5 OF PATHOLOGY, 11-16-00.

6 MR. PIUZE: AND THE ANCESSION (SIC) NUMBER --

7 THE WITNESS: ACCESSION.

8 MR. PIUZE: ACCESSION NUMBER IS 1556.

9 THE COURT: THANK YOU. NO. 1556, DANIEL FREEMAN
10 REPORT, NOVEMBER 16TH, 2000, IS 34 FOR IDENTIFICATION.

11
12 (I.D. 34 - FREEMAN HOSPITAL REPORT, 11-16-00)

13
14 Q. BY MR. PIUZE: AGAIN, SPUTUM?

15 A. YES.

16 Q. WITHOUT GOING THROUGH THE WHOLE THING, IS THERE
17 ANYTHING DIFFERENT IN THIS PARTICULAR PATH REPORT THAT'S
18 IMPORTANT FOR YOU TO TELL THE JURY ABOUT, PLEASE?

19 A. NO.

20 Q. SO AFTER DOING ANOTHER PATH REPORT, THE NEXT
21 DAY, STILL, NO REAL NEWS?

22 A. THAT'S CORRECT.

23 MR. PIUZE: HERE'S 35.

24 THE COURT: WHAT IS 35, MR. PIUZE?

25 MR. PIUZE: DANIEL FREEMAN HOSPITAL, DEPARTMENT OF
26 PATHOLOGY, 11-21-00, ACCESSION NO. 1581.

27 THE COURT: 1581, DATED NOVEMBER 21, 2000, PATH
28 REPORT IS 35 FOR IDENTIFICATION

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1 (I.D. 35 - PATH REPORT 11-21-00)

2
3 Q. BY MR. PIUZE: STILL SPUTUM?

4 A. STILL SPUTUM, STILL INADEQUATE. NO
5 MACROPHAGES. NO RESPIRATORY COLINEAR EPITHELIAL CELLS.

6 MR. PIUZE: THE NEXT ONE IS 36, AND IT'S TWO PAGES.

7 THE COURT: IT'S ANOTHER PATH REPORT?

8 MR. PIUZE: IT IS. SO I NEED JUST A TOUCH OF
9 GUIDANCE. DO YOU MAKE IT A- AND B- OR 36 FOR BOTH OF THEM?

10 THE COURT: 36 FOR BOTH OF THEM COLLECTIVELY.

11 AND THE DATE OF THE PATHOLOGY REPORT IS?

12 MR. PIUZE: 11-21-00, ACCESSION NO. 1590.

13 THE COURT: 1590, PATH REPORT DATED NOVEMBER 21ST,
14 2000 IS 36 FOR IDENTIFICATION.

15
16 (I.D. 36 - PATH REPORT 11-21-00)

17
18 Q. BY MR. PIUZE: IS THERE A CHANGE NOW HERE IN
19 WHAT THE PATHOLOGIST REPORTS HAVING SEEN OR FOUND?

20 A. YES.

21 Q. EXPLAIN, PLEASE.

22 A. OKAY. IN THIS CASE, AGAIN, THE DEMOGRAPHIC
23 INFORMATION IS AT THE TOP FOR HIS NAME, DATE OF BIRTH, HIS
24 ROOM NUMBER, HIS DOCTORS.

25 AND THEN UNDER THE SPECIMEN INFORMATION, YOU
26 SEE A, B, C, AND D. AND SO THIS CASE CONSISTS OF FOUR PARTS.

27 PART A WAS LABELED AS DIAPHRAGM NODULES.

28 PART B IS LEFT LOWER LOBE.

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1 PART C IS LEFT PLEURA.

2 AND PART D IS LEFT PLEURA.
3 AND THEN UNDER -- GOING DOWN, YOU CAN ACTUALLY
4 SEE THE GROSS DESCRIPTION OF THOSE SPECIMENS, AND YOU CAN
5 ALSO SEE THAT THEY DID WHAT'S CALLED A FROZEN SECTION. AND
6 WHAT A FROZEN SECTION IS, IS THAT OFTEN AT THE TIME OF
7 SURGERY, WHEN A SURGEON IS IN THERE AND SEES SOME TYPE OF
8 ABNORMALITY THAT HE OR SHE THINKS IS SOMEHOW SIGNIFICANT,
9 THEY WILL SEND IT TO A PATHOLOGIST, LIKE MYSELF, TO DO A STAT
10 FROZEN.

11 AND WHAT IS DONE IS A PIECE OF TISSUE COMES
12 OUT, AND WE PUT IT INTO A TYPE OF EMBEDDING MEDIA. AND WE
13 PUT IT IN A MACHINE CALLED CRYOSTAT, C-R-Y-O-S-T-A-T, AND WE
14 CAN RAPIDLY FREEZE TISSUE VERY QUICKLY, IN A MATTER OF
15 SECONDS.

16 AND ONCE THAT TISSUE IS FROZEN IN THE EMBEDDING
17 MEDIA, WE THEN PUT IT INTO THIS MACHINE, OR IT'S IN THIS
18 MACHINE ALREADY, AND THERE'S A MICROTOME INSIDE AND WE CAN
19 CUT THESE VERY THIN SECTIONS OF THE TISSUE, PUT IT ONTO A
20 GLASS SLIDE, AND THEN DO A VERY RAPID STAIN WITH SOME DYES.
21 AND WE CAN TELL THE PATHOLOGIST -- EXCUSE ME -- THE SURGEON
22 WHETHER THEY DO OR DO NOT HAVE SOME TYPE OF A PROCESS GOING
23 ON.

24 AND IN HERE, YOU SAY THAT HE HAD AN
25 INTRAOPERATIVE CONSULTATION WITH FROZEN SECTION EXAMINATION.
26 AND IF YOU GO DOWN THERE A LITTLE BIT, IT SAYS FROZEN SECTION
27 DIAGNOSIS. MESOTHELIOMA VERSUS ADENOCARCINOMA, AND IT HAS
28 COMMA, FINAL AWAITING PERMANENT SECTION.

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1 AND WHAT THAT MEANS IS THAT ONCE THAT TISSUE
2 HAS BEEN FROZEN, IS THAT THAT TISSUE WILL BE THAWED, AND IT
3 WILL BE PUT INTO A FORMALIN, AND THEN IT WILL BE PROCESSED,
4 JUST LIKE ANY OTHER TISSUE FOR PERMANENT SECTION.

5 AND EVENTUALLY, IT WILL BE PUT INTO THE WAX,
6 HARDENED, AND THIN SECTIONS OF IT WILL BE TAKEN, PUT ONTO
7 GLASS SLIDES, STAINED, AND THEN I OR SOME OTHER PATHOLOGIST
8 WILL LOOK AT IT AND TRY TO MAKE AN EXACT DIAGNOSIS.

9 Q. THANK YOU.

10 ONE OF THE WORDS YOU USED EARLY ON IN THAT
11 ANSWER WAS STAT, S-T-A-T.

12 WHAT DOES STAT MEAN, S-T-A-T?

13 A. IMMEDIATE, RAPID.

14 Q. IS A FROZEN SECTION SOMETHING THAT'S DONE ON
15 THE FLY, WHILE THE PERSON IS STILL OPENED UP, TO GIVE THE
16 SURGEONS AN IDEA OF WHAT'S GOING ON?

17 A. YES.

18 Q. AND IS A FROZEN SECTION MORE OR LESS OR THE
19 SAME IN ACCURACY AS FAR AS TAKING THE SAME SPECIMEN AND THEN
20 DOING THE OTHER STUFF YOU'VE DESCRIBED?

21 A. WELL, THE FROZEN SECTION IS, SUCH AS IT IS, NOT
22 GOING TO BE AS GOOD AS THE PERMANENT SECTION, BUT IT IS GOOD
23 ENOUGH TO USUALLY MAKE A DIFFERENTIAL DIAGNOSIS, WHICH IS
24 WHAT THEY DID, IN THIS CASE, SO IT'S NOT AS GOOD, BUT IT IS
25 ADEQUATE TO TELL WHETHER A PERSON DOES OR DOES NOT HAVE A
26 MALIGNANCY. AND THEN, BASED ON EXACTLY WHAT PART OF THE BODY
27 YOU'RE OPERATING ON, THAT INFORMATION CAN BE USED TO DICTATE
28 FURTHER THERAPY.

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1 IN SOME INSTANCES, SAY IF IT WAS IN THE BREAST,
2 OR SAY IT WAS IN THE LUNG, THEY MIGHT DO A MASTECTOMY IN THE
3 BREAST, OR THEY MIGHT DO A LOBECTOMY OR PNEUMONECTOMY IF IT
4 WAS IN THE LUNG.

5 Q. OKAY. UP UNTIL THIS PATH REPORT HIT THE
6 DISPLAY HERE, WERE ALL OF THE OTHERS OFF OF SOME KIND OF
7 FLUID AND THIS IS THE FIRST ONE COMING FROM MORE SOLID
8 TISSUE?

9 A. YES.

10 Q. I THINK YOU MAY WELL HAVE EXPLAINED
11 DIFFERENTIAL DIAGNOSIS BEFORE, BUT IF I'M WRONG, I'D
12 APPRECIATE A SHORT EXPLANATION RIGHT NOW.

13 A. SURE. IT TURNS OUT THAT A VARIETY OF CANCERS
14 CAN LOOK SIMILAR TO ONE ANOTHER. AND BECAUSE OF THAT, YOU
15 SOMETIMES CAN'T MAKE AN ABSOLUTE DIAGNOSIS ON A FROZEN
16 SECTION, OR EVEN SOMETIMES, SOMETIMES ON A PERMANENT SECTION
17 WITHOUT DOING SOME ADDITIONAL STUDIES. SO WHAT YOU DO IS
18 THAT YOU GIVE THE POSSIBILITIES.

19 AND IN THIS CASE, BASED ON THE APPEARANCE OF
20 THE CANCER CELLS AND THE STRUCTURES THEY WERE FORMING BY
21 FROZEN SECTION, THE PRIMARY DIFFERENTIAL DIAGNOSIS WAS
22 BETWEEN MESOTHELIOMA, WHICH IS A TUMOR THAT ARISES FROM THE
23 MESOTHELIAL CELLS THAT LINE THE PLEURA, AND ADENOCARCINOMA,
24 WHICH WOULD BE A TUMOR THAT HAS TWO CHARACTERISTICS. AND ONE
25 OF THOSE WOULD BE THAT THE TUMOR IS FORMING GLANDS OR TUBULES
26 OR PAPILLARY STRUCTURES AND ANOTHER CHARACTERISTIC WOULD BE
27 THAT IT'S PRODUCING A SUBSTANCE CALLED MUCUS, OR MUCIN.

28 Q. SO AFTER LOOKING THAT IT, THE PATHOLOGIST SAID
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1 IT'S GOING TO BE MESOTHELIOMA OR ADENOCARCINOMA; IS THAT A
2 FAIR READING?

3 A. YES.

4 Q. NOW, JUST SO -- I WANT TO MOVE ALONG, BUT I
5 ALSO DON'T WANT ANYONE TO THINK I'M SKIPPING SOMETHING THAT'S
6 IMPORTANT.

7 WHERE IT SAYS SPECIMEN INFORMATION UP HERE, A,
8 B, C, D, AND THAT'S WHERE THEY GOT -- WHERE THE DOCTORS GOT
9 THE TISSUE FROM, RIGHT?

10 A. YES.

11 Q. COMING DOWN HERE, THIS IS THE "A" UP HERE?

12 A. THAT IS CORRECT.

13 Q. AND THE DIFFERENTIAL DIAGNOSIS IS MADE AFTER
14 THE "A" BUT BEFORE THE OTHER STUFF IS REPORTED.

15 NOW, IS THERE ANY SIGNIFICANCE TO THAT?

16 A. NOT NECESSARILY. WHAT THAT MEANS IS THAT THEY
17 DID NOT DO A FROZEN SECTION ON ANY OF THE OTHER PARTS OF THE
18 CASE. AND USUALLY, THE REASON WOULD BE, IS THAT IF YOU HAVE
19 A TUMOR INVOLVING YOUR PLEURA AND THAT IS A DIFFERENTIAL
20 DIAGNOSIS IN GENERAL, IT'S NOT SOMETHING THAT'S EASILY
21 TREATABLE OR NOT SOMETHING THAT'S GOING TO TYPICALLY RESPOND
22 TO THERAPY.

23 SO ONCE THEY HAVE THAT MAIN DIAGNOSIS, THERE
24 WOULD NOT BE ANY SPECIFIC REASON TO DO ANOTHER FROZEN
25 SECTION.

26 Q. IN OTHER WORDS, WHETHER IT'S GOING TO BE
27 MESOTHELIOMA OR ADENOCARCINOMA, IT'S BAD NEWS AND BAD NEWS?

28 A. IT'S BAD NEWS AND BAD NEWS.
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1 POTENTIALLY, IT'S KIND OF INTERESTING. THERE
2 IS SOME VERY RADICAL SURGERY THAT'S BEING DONE NOW FOR
3 MESOTHELIOMA. AND ABOUT A YEAR AGO, THERE JUST CAME OUT
4 ANOTHER REPORT THAT THEY'RE NOW TRYING TO DO THAT ON SOME OF
5 THESE PSEUDOMESOS, WHICH IS KIND OF MIND-BOGGLING TO ME, BUT
6 THEY HAVE DONE IT.

7 Q. OKAY. SO DOWN HERE AT THE BOTTOM OF

8 EXHIBIT 36, IT STARTS TALKING ABOUT MICROSCOPIC EXAMINATION,
9 AND IT GOES OVER TO A SECOND PAGE. I JUST WANT TO LEAVE IT
10 HERE ON WHERE PEOPLE CAN ACTUALLY SEE IT FOR A MINUTE.
11 (READING:)

12
13 SECTIONS OF DIAPHRAGMATIC
14 NODULES SHOW TUMOR MASSES CONTAINING
15 CLUSTERS OF POORLY DIFFERENTIATED
16 ADENOCARCINOMA CELLS, SOME OF WHICH
17 CONTAIN --

18
19 CAN YOU HELP ME OUT THERE?

20 A. PSAMMOMA.

21 Q. THANK YOU.

22
23 -- PSAMMOMA BODIES. DENSE FIBROUS
24 PROLIFERATION IS ALSO IDENTIFIED.

25 FOR OPENERS, WHAT DOES POORLY DIFFERENTIATED
26 MEAN, PLEASE?

27 A. TUMORS ARE CLASSIFIED ACCORDING TO THE BEST
28 DIFFERENTIATED AREA AND ARE GRADED ACCORDING TO THE WORST
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1 DIFFERENTIATED AREA.

2 AND WHAT DIFFERENTIATION MEANS IS HOW
3 CLOSELY -- CLOSE THE CANCER CELL RESEMBLES THE NORMAL CELL
4 THAT IT IS THOUGHT TO HAVE ARISEN FROM. THE MORE CLOSELY
5 THAT IT RESEMBLES A NORMAL CELL, THE BETTER DIFFERENTIATED IT
6 WOULD BE. THE LEAST CLOSELY THAT IT RESEMBLES A NORMAL CELL
7 WHICH IT WAS THOUGHT TO ARISE FROM, THE MORE POORLY
8 DIFFERENTIATED IT WOULD BE.

9 SO YOU CLASSIFY BY THE BEST DIFFERENTIATED AREA
10 AND YOU GRADE BY THE WORST, AND THAT DOES HAVE SOME
11 PROGNOSTIC IMPORTANCE.

12 Q. THAT'S THE FIRST ONE. I NOW FLIP THE PAGE.
13 WITHOUT MY READING IT, BECAUSE WE CAN ALL READ
14 HERE, B, WHAT'S THE SIGNIFICANCE OF THE FINDINGS IN B,
15 PLEASE?

16 A. BASICALLY, THE SAME AS A. IT'S A TUMOR
17 MALIGNANCY THAT'S FORMING ON GLANDULAR STRUCTURES, AND THERE,
18 THEY REFER TO IT AS AN ADENOCARCINOMA, WHICH MEANS THAT,
19 AGAIN, IT'S A MESOTHELIOMA, BUT IT'S A TUMOR THAT'S FORMING
20 EITHER ON GLANDULAR STRUCTURES, TUBULAR, PAPILLARY STRUCTURES
21 OR IS PRODUCING MUCIN.

22 Q. MUCIN, AGAIN, IS?

23 A. IS A HIGH MOLECULAR WEIGHT GLYCOPROTEIN,
24 G-L-Y-C-O-P-R-O-T-E-I-N, THAT IS FORMED BY VARIOUS CELLS IN
25 OUR BODY. THE STUFF THAT COMES OUT YOUR NOSE WHEN YOU HAVE A
26 COLD, THAT'S MUCUS. THE STUFF THAT YOU SOMETIMES VOMIT WHEN
27 YOU GOT SICK, FROM YOUR GI TRACT, THAT STUFF'S MUCUS. IT'S A
28 SECRETOR MATERIAL THAT'S PRESENT IN MANY OF OUR BODY
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1 CAVITIES.

2 Q. IS THE WORD YOU SAID, IS THAT WHAT YOU HAD
3 DEFINED AS MUCUS?

4 A. I THOUGHT NO.

5 Q. SORRY. I SHOULDN'T HAVE. SORRY.
6 C AND D. WHAT'S THE SIGNIFICANCE THERE,
7 PLEASE?

8 A. BASICALLY THERE, THEY SHOW THAT THE TUMOR
9 CELLS ARE FORMING THESE INDIVIDUAL GLANDS. AND HERE, THOUGH,
10 THEY USED THE TERM MESOTHELIOMA. THEY SAY SECTIONS OF LEFT

11 PLEURA SHOW INDIVIDUAL SMALL GLANDS AND CLUSTERS WITH
12 DIFFUSE -- THAT MEANS IT'S WIDESPREAD -- EPITHELIAL -- THAT
13 MEANS CELL -- ARE EITHER RECTANGULAR, ROUND,
14 POLYGONAL -- EPITHELIAL-TYPE MESOTHELIOMA.

15 AND THEN THEY SHOW THE DIFFERENTIATION. THEY
16 SAY PAPILLARY FORMATION, TUBULES AND PSAMMOMA BODIES.
17 PSAMMOMA BODIES ARE JUST AREAS OF CALCIFICATION THAT ARE
18 LAMINATED THAT OCCUR IN VIRTUALLY ANY TYPE OF PAPILLARY TUMOR
19 IN THE BODY.

20 AND THEN THEY TALK ABOUT A FEW THINGS THAT THEY
21 DIDN'T SEE. THEY SAID THERE WASN'T ANY EVIDENCE OF
22 CARTILAGINOUS METAPLASIA.

23 CARTILAGINOUS METAPLASIA MEANS CELL OF A CELL
24 TYPE FROM ONE TISSUE TO ANOTHER, AND THE REASON THAT MIGHT BE
25 IMPORTANT IS THAT CERTAIN MESOTHELIOMAS PRODUCE CARTILAGE.

26 AND THEN THEY SAY THERE THAT THERE WAS NO
27 SARCOMATOUS PATTERN IDENTIFIED. AND THE REASON THEY SAID
28 THAT IS BECAUSE A SIGNIFICANT NUMBER OF MESOTHELIOMAS ARE
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1 WHAT IS CALLED BIPHASIC, AND THAT MEANS THEY HAVE BOTH AN
2 EPITHELIAL COMPONENT AND A COMPONENT IN WHICH THE CANCER
3 CELLS ARE ELONGATED SPINDLE CELLS. SO THEY DIDN'T SEE ANY OF
4 THAT.

5 AND THEN THEY SAID THAT THERE WAS SOME DENSE
6 FIBROUS PLEURA TISSUE THAT SHOWED THICKENING.

7 AND THEN THEY ALSO SAID OCCASIONAL EPITHELIAL
8 CELL-TYPE MESOTHELIOMA CELLS ARE IDENTIFIED. AND I DON'T
9 HAVE ANY IDEA WHY THEY SAID THAT, BECAUSE THEY ALREADY HAD
10 DESCRIBED THAT.

11 Q. ANYWAY, WHERE IT SAYS DIAGNOSIS, DID THESE
12 PATHOLOGISTS COME UP WITH MESOTHELIOMA?

13 A. THEY DID.

14 MR. PIUZE: NEXT DOCUMENT.

15 THE COURT: THAT WILL BE 37 FOR IDENTIFICATION.

16 AND WHAT IS IT, MR. PIUZE?

17 MR. PIUZE: NEXT ONE WILL BE 37.

18 THE COURT: 37, PLEASE.

19 MR. PIUZE: AND IT IS DANIEL FREEMAN HOSPITAL,
20 DEPARTMENT OF PATHOLOGY, 11-21-00, ACCESSION NUMBER 1594.

21 THE COURT: ACCESSION NUMBER 1594, DEPARTMENT OF
22 PATHOLOGY, NOVEMBER 21ST, 2000, 37 FOR IDENTIFICATION.

23
24 (I.D. 37 - PATH REPORT 11-21-00)

25
26 Q. BY MR. PIUZE: OKAY. NOW, THIS CAME AFTER THE
27 OTHER ONE, RIGHT?

28 A. YES.

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1 Q. THE ONE WE JUST SAW?

2 A. WHAT REALLY HAPPENED, PROBABLY, IS WHEN THEY DO
3 THE VIDEO-ASSISTED THORACOSCOPIC SURGERY, IN MOST INSTANCES,
4 IN THE TYPE OF TUMOR MR. RELLER HAS, THEY WOULD ENCOUNTER
5 FLUID. SO USUALLY WHAT THEY'D BE DOING IS KIND OF DIFFERENT
6 THINGS AT THE SAME TIME.

7 THEY WOULD FIRST SUCK THE FLUID OUT SO THEY
8 COULD LOOK INSIDE THE CHEST CAVITY, AND THAT WAS JUST ANOTHER
9 SPECIMEN THEY OBTAINED AT THE SAME DATE AS THEY WERE PROBABLY
10 DOING THE VATS.

11 Q. SO LET ME GO TO THE BOTTOM LINE TO START WITH.
12 (READING:)
13

17 UNFORTUNATELY, HAS A MALIGNANCY. IT'S A BAD MALIGNANCY, AND
18 IT'S ADENOCARCINOMA OR MESOTHELIOMA.

19 FROM A PRACTICAL POINT OF VIEW, IT'S PROBABLY
20 NOT GOING TO MAKE ANY DIFFERENCE, EXCEPT THAT -- THAT THEY
21 MIGHT WANT TO TREAT AN ADENOCARCINOMA WITH CHEMO, WHEREAS
22 MALIGNANT MESOTHELIOMA, THERE REALLY IS NO GOOD TREATMENT FOR
23 THAT TYPE OF CANCER, PERIOD, UNLESS YOU CONSIDER RADICAL
24 EXTRA PLEURAL PNEUMONECTOMY AS A GOOD TREATMENT.

25 Q. THAT WAS A MOUTHFUL.
26 SAY THAT AGAIN, PLEASE.
27 RADICAL?

28 A. EXTRA PLEURA PNEUMONECTOMY.

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1 Q. WHAT DOES IT MEAN?
2 A. SOME PEOPLE THAT ARE RELATIVELY
3 YOUNG -- MR. RELLER, I THINK, WAS 62 OR SO -- WHO HAVE
4 MESOTHELIOMAS THAT ARE CONFINED TO THE PLEURA, THAT MEANS
5 THAT THEY HAVE NOT INVADED INTO THE CHEST WALL, AND THEY HAVE
6 NOT INVADED INTO THE LUNG, THEY WILL DO THIS VERY EXTENSIVE
7 SURGICAL FLOOR, WHICH THEY WILL MAKE A VERY LARGE INCISION IN
8 THE CHEST WALL, SPREAD THE RIBS APART, AND THEY WILL GET INTO
9 A TISSUE PLANE THAT IS BEHIND THE PARIETAL PLEURA, WHICH IS
10 PLEURA THAT LINES THE CHEST WALL.

11 AND THEY WILL, BY BLUNT DISSECTION WITH THEIR
12 HANDS, AND ALSO SHARP DISSECTION, WILL DISSECT OUT THE ENTIRE
13 PLEURA ALL THE WAY AROUND IT, UP AND DOWN, UNTIL THEY GET TO
14 WHERE THE VESSELS AND THE AIR TUBES THAT ARE -- ENTER THE
15 LUNG. THEY'LL STAPLE THOSE, AND THEY'LL TAKE OUT THE ENTIRE
16 SPECIMEN, WHICH WOULD INCLUDE THE PARIETAL PLEURA, THE
17 VISCERAL PLEURA, WHERE THE TUMOR IS, AND THE ENTIRE LUNG.

18 NOT INFREQUENTLY, BECAUSE MESOTHELIOMAS INVADE
19 THE DIAPHRAGM, THEY'LL HAVE TO TAKE OUT PART OF THE DIAPHRAGM
20 AND REPLACE THAT WITH A MARLEX MESH, AND THEY'LL ALSO HAVE TO
21 TAKE OUT PART OF THE PERICARDIUM, WHICH IS THE LINING OF THE
22 CAVITY OF THE HEART, AND REPLACE THAT WITH MARLEX. BUT THEY
23 CAN TAKE THAT OUT, THAT ENTIRE SPECIMEN.

24 THE SURVIVAL RATES FOR AN EPITHELIAL
25 MESOTHELIOMA STAGE 1, TWO YEARS' SURVIVAL RATE IS ABOUT
26 75 PERCENT. FIVE YEARS' SURVIVAL RARE IS ABOUT 50 PERCENT.

27 IF YOU LOOK AT COMERS OF MESOTHELIOMA AND STAGE
28 THEM OR SUBTYPE THEM, THE TWO-YEAR SURVIVAL RATE IS
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1 25 PERCENT; THE FIVE-YEAR SURVIVAL RATE IS 9 PERCENT.
2 Q. OKAY. SO, ANYWAY, IF IT'S ADENOCARCINOMA,
3 CHEMOTHERAPY THERAPY; IF IT'S MESOTHELIOMA, MAYBE NOTHING BUT
4 MAYBE THIS RADICAL SURGERY?

5 A. MAYBE.

6 Q. MAYBE. SO AS FAR AS THESE DOCTORS DOING THE
7 PATH SLIDES AND THE CLINICAL DOCTORS WHO HAD TO READ THESE
8 REPORTS AND FIGURE OUT WHAT TO DO WITH MR. RELLER IS STILL
9 BAD NEWS AND BAD NEWS?

10 A. BAD NEWS AND BAD NEWS, YES, UNFORTUNATELY.

11 Q. OKAY.
12 HERE'S NO. 38.
13 THE COURT: WHAT IS 38?
14 MR. PIUZE: IT'S SOMETHING DIFFERENT, YOUR HONOR.
15 THE COURT: OKAY. HELP ME OUT HERE. WHAT WOULD YOU
16 LIKE TO MARK IT, 38 FOR IDENTIFICATION?
17 EVEN IF IT'S DIFFERENT.
18 MR. PIUZE: LAC, MEANING LOS ANGELES COUNTY, USC,
19 UNIVERSITY OF SOUTHERN CALIFORNIA, MEDICAL CENTER PATH REPORT

20 COMPLETED 12-15-00.
21 Q. AND, DR. HAMMOND, I NEED YOUR HELP NOW. WHERE
22 IS THE NUMBER, THE EQUIVALENT OF ACCESSION OR SOME OTHER
23 NUMBER THAT I CAN DIFFERENTIATE THESE BY?
24 A. IT WOULD BE C00-28881.
25
26 (I.D. 38 - PATH REPORT, 12-15-00)
27
28 Q. BY MR. PIUZE: SO IT'S CASE NO. C00-28881.
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1 WHAT'S THIS?
2 A. THAT IS ANOTHER PATHOLOGY REPORT IN WHICH THEY
3 LOOKED AT PLEURAL FLUID, AND THEY GAVE THE CLINICAL HISTORY,
4 AND THEN THEY DESCRIBED WHAT THEY SAW, AND THEN THEY MADE A
5 DIAGNOSIS AND THEY STATED WHAT THEY WERE GOING TO DO.
6 Q. AS FAR AS DESCRIBING WHAT THEY SAW IN
7 MICROSCOPIC DESCRIPTION, IS THERE ANYTHING THERE
8 THAT -- THAT'S SIGNIFICANTLY DIFFERENT THAT YOU THINK THE
9 JURY SHOULD BE AWARE OF?
10 A. NOT SIGNIFICANTLY DIFFERENT ENOUGH, NO.
11 I THINK, AGAIN, THE MAIN PROBLEM YOU'RE FACED
12 WITH IS WHETHER THIS IS AN ADENOCARCINOMA OR AN EPITHELIAL
13 MESOTHELIOMA, AND IN MOST HOSPITALS, THE NEXT STEP WOULD HAVE
14 BEEN TO DO HISTOCHEMISTRY AND IMMUNOHISTOCHEMISTRY.
15 Q. OKAY. UNDER MICROSCOPIC DIAGNOSIS, THE PART
16 I'M LOOKING AT SAYS, FAVOR ADENOCARCINOMA, SEE COMMENT.
17 WHAT DOES "FAVOR" MEAN IN THAT CONTEXT?
18 A. THEY THINK THAT'S THE MOST LIKELY DIAGNOSIS.
19 Q. JUST SO WE CAN ALL SEE, THERE'S REALLY NOTHING
20 ELSE ON THE PAGE THERE, HUH?
21 A. NO.
22 MR. PIUZE: HERE'S NO. 39.
23 THE COURT: AND WHAT IS 39 FOR IDENTIFICATION?
24 MR. PIUZE: LAC-USC MED CENTER, PATH REPORT COMPLETED
25 12-15-00, CASE NO. S00-11093.
26 THE COURT: 39 FOR IDENTIFICATION, S00-11093.
27
28 (I.D. 39 - PATH REPORT, 12-15-00)
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1 Q. BY MR. PIUZE: IN THE GROSS DESCRIPTION HERE,
2 IS THERE ANYTHING SIGNIFICANTLY DIFFERENT THERE, PLEASE?
3 A. WELL, WHAT'S SIGNIFICANT ABOUT IS THAT THEY
4 ACTUALLY OBTAINED THE BLOCKS AND SLIDES FROM THE DANIEL
5 FREEMAN HOSPITAL FOR THEM TO REVIEW, AND, AGAIN, THEY LIST
6 THOSE NUMBERS THAT WE JUST HAVE GONE OVER. SO THEY OBTAINED
7 THE BLOCKS AND THE SLIDES, AND THEN THEY DID WHAT I JUST
8 MENTIONED I WOULD DO IF IT WERE MY CASE.
9 Q. OKAY. SO NO NEW SAMPLES. THIS IS THE SAME
10 SAMPLE WITH NEW PEOPLE LOOKING AND NEW PEOPLE DOING TESTS ON
11 IT?
12 A. YES, UH-HUH.
13 Q. DESCRIBE THE TESTS AND EXPLAIN WHY THEY'RE
14 DONE, PLEASE.
15 A. THESE ARE CALLED IMMUNOHISTOCHEMICAL TESTS, AND
16 IT'S A TECHNIQUE THAT'S VERY COMMONLY USED IN PATHOLOGY
17 NOWADAYS, ESPECIALLY FOR DIAGNOSIS, IS CANCERS THAT ARE
18 DIFFICULT TO DIAGNOSE BY CONVENTIONAL METHODS.
19 BASIC METHODOLOGY IS THAT YOU MAKE ANTIBODIES
20 AGAINST SUBSTANCES THAT ARE EITHER INSIDE CELLS OR ON THE
21 SURFACE OF CELLS, AND YOU REACT THE CELLS, IN THIS CASE,
22 CANCER CELLS, WITH THESE ANTIBODIES.

23 IT TURNS OUT THAT CERTAIN TYPES OF CANCERS HAVE
24 CERTAIN TYPES OF PROFILES THAT ARE OFTEN DIFFERENT FROM ONE
25 ANOTHER. SO BY LOOKING AT THE PROFILE OF REACTIVITY OF A
26 GIVEN CANCER CELL, YOU CAN OFTEN DETERMINE WHAT THE EXACT
27 DIAGNOSIS IS.

28 IN THIS CASE, THEY KIND OF DID WHAT I WOULD
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1 USUALLY DO, EXCEPT I WOULD PROBABLY DO A COUPLE OF DIFFERENT
2 ONES, BUT THEY DID TESTS FOR SEEING IF THIS, IF THE CANCER
3 CELLS HAD THE REACTIVITY OF A MESOTHELIOMA OR THE REACTIVITY
4 OF A PRIMARY LUNG ADENOCARCINOMA.

5 AND WHAT THEY DID HERE WERE TESTS FOR A
6 SUBSTANCE CALLED CEA, WHICH STANDS FOR CARCINOEMBRYONIC
7 ANTIGEN, BER-EP4, WHICH IS A TYPE OF EPITHELIAL MARKER,
8 CD15, WHICH IS ALSO INTRODUCED WITH LM1 IS ANOTHER EPITHELIAL
9 MARKER FOR LUNG CANCER, AND FOR A SUBSTANCE CALLED
10 CALRETININ, WHICH IS A CALCIUM BINDING PROTEIN, AND THEN THEY
11 ALSO DID A TEST FOR TTF-1, AND THAT STANDS FOR THYROID
12 TRANSCRIPTION FACTOR 1.

13 MAYBE TO MAKE AN EXPLANATION FOR ADENOCARCINOMA
14 OF A LUNG, YOU WOULD EXPECT TO SEE POSITIVE STAINING FOR
15 BER-EP4, CD15 AND TTF-1 IN A FAIRLY HIGH PERCENTAGE OF CASES.
16 YOU MIGHT NOT NECESSARILY HAVE ALL OF THOSE STAINING, BUT
17 THAT WOULD BE THE TYPICAL SPECTRUM. ONE OF THESE THEY DID
18 HERE FOR MESOTHELIOMA WAS THE CALRETININ. ABOUT 95 PERCENT
19 OF ALL EPITHELIAL MESOTHELIOMAS, THE CANCER CELLS ARE STAINED
20 FOR CALRETININ, WHEREAS IN PULMONARY ADENOCARCINOMAS, THEY
21 WOULD NOT.

22 SO WHAT THEY GOT HERE WAS A PROFILE THAT WAS
23 FAIRLY CHARACTERISTIC OF AN ADENOCARCINOMA OF THE LUNG. THE
24 ONE THAT IS MOST SPECIFIC THERE IS TTF-1, AND WHAT THAT IS,
25 EVEN THOUGH THE NAME SOUNDS LIKE IT SHOULDN'T HAVE ANYTHING
26 TO DO WITH LUNG CANCER, IT DOES. THYROID TRANSCRIPTION
27 FACTOR 1 IS ACTUALLY A TRANSCRIPTION FACTOR FOR SEVERAL
28 DIFFERENT THINGS.

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1 WHAT TRANSCRIPTION MEANS IS THAT THE RNA, WHICH
2 IS THE RIBONUCLEIC, R-I-B-O-N-U-C-L-E-I-C, ACID IN THE
3 NUCLEUS OF A CELL IS TRANSCRIBING THE DNA, AND THEN THAT'S
4 GOING TO GO OUT IN THE CYTOPLASM AND TELL THE CELL MACHINERY
5 WHAT TO DO, WHAT MATERIAL TO MAKE.

6 AND IN THE CASE OF ADENOCARCINOMA OF THE LUNG,
7 THE THYROID TRANSCRIPTION FACTOR IS FOR A SUBSTANCE CALLED
8 SURFACTANT, S-U-R-F-A-C-T-A-N-T. THAT SURFACTANT SUBSTANCE
9 IS MADE BY CELLS THAT LINE THE LUNG. THAT IS HIGHLY SPECIFIC
10 FOR LUNG. YOU DON'T FIND SURFACTANT IN ANY OTHER PART OF THE
11 BODY. AND THE FACT THAT THAT WAS POSITIVE FOR TTF-1 WOULD
12 ESSENTIALLY, WITH 100 PERCENT ACCURACY, TELL YOU THAT THIS IS
13 A PRIMARY LUNG ADENOCARCINOMA.

14 Q. ADENOCARCINOMA IN THE LUNG BECAUSE MESOTHELIOMA
15 ISN'T IN THE LUNG?

16 A. THAT IS ALSO -- BECAUSE THE FACT THAT THE
17 AMINOPHENOL TYPE IS CHARACTERISTIC OF A PRIMARY LUNG CANCER.

18 Q. OKAY. SO HERE WE ARE AT -- STARTING AT
19 EXHIBIT 32 THERE AND GOING ALL THE WAY UP TO EXHIBIT 39,
20 THEY'RE THE SAME TISSUE SAMPLES, BUT THEY'RE REMOVED FROM
21 MARINA DEL REY DOWN TO DOWNTOWN L.A.?

22 A. YES.

23 Q. PATHOLOGICALLY, WHAT DID MR. RELLER HAVE?

24 A. MR. RELLER HAS A PSEUDOMESOTHELIOMATOUS PRIMARY
25 PULMONARY ADENOCARCINOMA.

26 Q. DEFINITELY, LIKE, DEFINITELY, ABSOLUTELY, NOT
27 NO WAY MESOTHELIOMA?
28 A. NO WAY MESOTHELIOMA.
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1 Q. THANK YOU.
2 A. IMPOSSIBLE.
3 Q. NOW, THE SUBSET OF ADENOCARCINOMA THAT YOU JUST
4 MENTIONED, IS THAT EXCEEDINGLY RARE?
5 A. YES.
6 Q. ROUGHLY, HOW MANY CASES HAVE BEEN REPORTED IN
7 THE LITERATURE, PLEASE?
8 A. ABOUT 165.
9 Q. NOT 165,000, BUT JUST 165?
10 A. 165 TOTAL. THERE ARE ABOUT 52 DESCRIBED IN
11 1956, 6 IN 1976, 65 IN 1993, AND THEN ABOUT 30 IN 1992, AND
12 THEN IT'S NOT CLEAR EXACTLY HOW MANY MORE WERE DESCRIBED BY
13 THE SAME AUTHORS IN 1998, BUT I'VE SAID ABOUT 12.
14 Q. DO YOU HAVE PERSONAL EXPERIENCE WITH
15 PSEUDOMESOTHELIOMATOUS ADENOCARCINOMA?
16 A. I DO.
17 Q. DESCRIBE IT.
18 A. WELL, AS A LUNG PATHOLOGIST, I SEE A LOT OF
19 INTERESTING AND UNUSUAL CASES, AND I HAVE SEEN NOW ABOUT A
20 HUNDRED CASES OF PSEUDOMESOTHELIOMAS, AND THE MAJORITY OF
21 THEM ARE ADENOCARCINOMAS, JUST LIKE THIS.
22 AND I'VE EVEN SUBDEFINED THEM, AS HAVE SOME OF
23 THESE AUTHORS WHO HAVE WRITTEN ARTICLES ON THEM. AND WHAT
24 MR. RELLER'S WOULD FALL INTO AS FAR AS A SUBTYPE WOULD BE
25 WHAT WOULD I CALL TUBULAR DESMOPLASTIC. THEY'RE VERY RARE
26 TUMORS. THEY LOOK LIKE MESOTHELIOMAS WITH THEIR OWN EYES.
27 THEY PRODUCE THE SAME TYPE OF SYMPTOMS THAT MESOTHELIOMA
28 PRODUCE. THEY ACTUALLY HAVE A WORSE PROGNOSIS IN GENERAL
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1 THAN MESOTHELIOMA. THE AVERAGE SURVIVAL TIME IN MY SERIES IS
2 BETWEEN FOUR TO EIGHT MONTHS. THE AVERAGE SURVIVAL IN THE
3 LITERATURE IS ABOUT SIX TO SEVEN MONTHS.
4 MR. RELLER WOULD BE AN OUTLYER IN THE FACT THAT
5 HE IS -- HE HAS SURVIVED OVER TWO YEARS WITH THIS TYPE OF
6 ENTITY.
7 Q. OUTLYER MEANS WHAT?
8 A. IT MEANS THAT HE WOULD BE ONE OF THOSE PEOPLE
9 WHO HAS SO FAR SURVIVED SO MUCH FURTHER THAN ANY OTHER CASE
10 THAT, STATISTICALLY, YOU WOULD NOT INCLUDE HIM IN THE SAMPLE
11 TO DETERMINE WHAT THE AVERAGE SURVIVAL RATE WAS.
12 Q. LET ME FINISH UP WITH THIS.
13 BETWEEN -- AND I'M DEFINITELY LOOKING AT THE
14 CLOCK -- BETWEEN MESOTHELIOMA, PSEUDOMESOTHELIOMATOUS
15 ADENOCARCINOMA AND ADENOCARCINOMA, JUST GIVE US SOME IDEA OF
16 THE SURVIVAL RATES FOR EACH, AVERAGE SURVIVAL RATES, PLEASE.
17 A. THE AVERAGE SURVIVAL RATE FOR AN EPITHELIAL
18 MESOTHELIOMA IN ALL COMERS, WITH NO STRATIFICATION, WOULD BE
19 9 TO 12 MONTHS. THE AVERAGE SURVIVAL RATES OF AN
20 ADENOCARCINOMA OF THE LUNG IS TOTALLY DEPENDENT ON STAGE. SO
21 IT'S HARD TO COMPARE.
22 IF YOU HAD A STAGE 3 ADENOCARCINOMA, THE
23 AVERAGE SURVIVAL RATE WOULD BE SIX MONTHS.
24 PSEUDOMESOTHELIOMAS, THE AVERAGE SURVIVAL RATES
25 ARE BETWEEN FOUR TO EIGHT MONTHS.
26 Q. SO MR. RELLER, NOW, KNOWING THAT HE WAS
27 DIAGNOSED IN DECEMBER OF 2000, IS PRETTY FAR ALONG?
28 A. HE IS.

1 THE COURT: ALL RIGHT.

2 LADIES AND GENTLEMEN, YOU ARE ADMONISHED THAT
3 IT IS YOUR DUTY NOT TO CONVERSE AMONG YOURSELVES OR WITH
4 ANYONE ELSE ON ANY SUBJECT CONNECTED WITH THIS TRIAL OR TO
5 FORM OR EXPRESS ANY OPINION THEREON UNTIL THE CASE IS FINALLY
6 SUBMITTED TO YOU.

7 DR. HAMMAR, YOU'RE ORDERED TO RETURN AT 8:30
8 TOMORROW MORNING.

9 TOMORROW, JUST SO WE'RE ALL CLEAR, IS
10 JUNE 18TH.

11 HAVE A GREAT EVENING, FOLKS. I'LL SEE ALL OF
12 YOU FOLKS BACK AT 8:30 A.M. AS WELL.

13
14 (THE FOLLOWING PROCEEDINGS WERE HELD
15 IN OPEN COURT OUT OF THE PRESENCE
16 OF THE JURY:)

17
18 THE COURT: WE'RE OUTSIDE THE PRESENCE OF THE JURY.
19 ALL COUNSEL PREVIOUSLY STATED ARE PRESENT.
20 I JUST WANT TO MAKE SURE THAT THE RECORD IS

21 CLEAR.

22 IS IT CORRECT THAT WE'RE GOING TO HAVE TO GO
23 BACK TO THE OLD-FASHIONED NUMBERING SYSTEM OF PUTTING
24 SOMETHING IN EVIDENCE, AND WE'LL GO IN ORDER IN WHICH IT IS
25 INTRODUCED?

26 MS. WILKINSON: YES. I THINK YOUR NUMBERING SYSTEM,
27 YOUR HONOR, WORKS BEST FOR ALL OF US. WE'RE, ON OUR SIDE,
28 GLAD TO KNOW WHAT THE NEXT NUMBER IS, IS THE WAY YOU'VE
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1 NUMBERED IT. IT WILL BE THE EASIEST FOR EVERYBODY, INCLUDING
2 THE COURT.

3 THE COURT: SORRY. I'D LIKE TO DO IT YOUR WAY, AND
4 NOT VERY DIFFERENT NUMBERS, BUT YOU APPARENTLY HAVE SO MANY
5 NUMBERS, IT'S GOING TO BE HARD. THAT'S NUMBER ONE.

6 NUMBER TWO, THE OTHER DAY, WE LEFT OFF IN TERMS
7 OF INTRODUCTION OF EVIDENCE ON NO. 10, FRANK STATEMENT.

8 DOES ANYBODY WANT THAT, TO INTRODUCE THAT IN
9 EVIDENCE AT THIS TIME?

10 MR. PIUZE: YES.

11 THE COURT: ANY OBJECTION?

12 MS. WILKINSON: NO. SUBJECT TO THE EARLIER
13 OBJECTIONS.

14 THE COURT: OKAY. SUBJECT TO THE EARLIER OBJECTIONS,
15 WHICH ARE NOTED, AND RESPECTFULLY OVERRULED, 10 IS RECEIVED
16 INTO EVIDENCE.

17
18 (EVID. - 10)

19
20 THE COURT: 11. I HAVE DOWN AS YOUR PRIOR
21 NO. 225.01, THE TRANSCRIPT OF "FACE THE NATION," THE BLOWUP.

22 ANY OBJECTION TO THAT COMING IN EVIDENCE?

23 MS. WILKINSON: AS LONG AS IT'S ONLY THE BLOWUP,
24 SUBJECT TO OUR OTHER OBJECTIONS, NO, NOT THE FULL TRANSCRIPT.

25 THE COURT: SUBJECT TO YOUR OTHER OBJECTIONS, THE
26 BLOWUP IS WHAT IS COMING IN. THAT'S WHAT I HAVE DOWN HERE,
27 IS BLOWUP ONLY.

28
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6068

1 (EVID. - 11)

2
3 THE COURT: NO. 12, I HAVE TRANSCRIPT OF "FACE THE
4 NATION," 225. THE OTHER ONE WAS 225.01, WHICH WAS THE
5 BLOWUP. I GUESS THIS IS THE ENTIRE THING.

6 DO YOU HAVE AN -- YOU HAVE AN OBJECTION
7 TO --

8 MS. WILKINSON: YES, YOUR HONOR.

9 THE COURT: ACTUALLY, MR. PIUZE, RIGHT NOW, I'VE ONLY
10 SEEN PAGE 1 OF THAT, SO I'M GOING TO WITHHOLD ANY RULINGS ON
11 THAT AT THIS TIME.

12 MS. WILKINSON: OKAY.

13 MR. PIUZE: OKAY.

14 THE COURT: NO. 13 I HAVE AS MEMO FROM CULLMAN TO
15 WAKEHAM. THAT'S BEEN SHOWN TO THE JURY TWICE. IT'S DATED
16 DECEMBER 8TH, '70. I THINK TWICE.

17 MS. WILKINSON: YOUR HONOR, WE DON'T OBJECT TO THE
18 PAGE THAT MR. PIUZE IS MOVING IN. AND WE'RE GOING TO MOVE
19 IN, WHEN YOU GET TO DR. BURNS' EXHIBITS FROM THE DEFENDANT,
20 THE FULL EXHIBIT, WHICH IS 23. THE COURT DESIGNATED IT AS
21 23, AS THE DEFENDANTS' EXHIBIT.

22 THE COURT: ALL RIGHT. ACTUALLY, 23 IS ALREADY IN
23 EVIDENCE.

24 MS. WILKINSON: OKAY. THEN THAT'S THE COMPLETE ONE.
25 AS LONG AS IT'S THE COMPLETE ONE, WE'D LIKE TO HAVE IT IN
26 EVIDENCE. MR. PIUZE ONLY SHOWED A PAGE.

27 THE COURT: OKAY. BUT I HAVE 23 -- I HAD YOUR PRIOR
28 NUMBER DOWN AS 000035, REPORT OF THE TOBACCO AND HEALTH.
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6069

1 I HAVE DOWN NO. 13, WHICH IS THE ONE I THOUGHT
2 WE WERE TALKING ABOUT, WAS MEMO, CULLMAN FROM WAKEHAM.

3 DO I HAVE THIS WRONG HERE?

4 MS. WILKINSON: I THINK WE'RE TALKING ABOUT TWO
5 DIFFERENT DOCUMENTS.

6 MR. PIUZE, CAN YOU HELP ME OUT?

7 THE COURT: DO YOU WANT TO STRAIGHTEN IT OUT LATER
8 AND WE'LL GO THROUGH THE NUMBERS?

9 MS. WILKINSON: I THINK THE ONE YOU'RE TALKING ABOUT
10 IS A DIFFERENT DOCUMENT. IT IS WRITTEN FROM MR. WAKEHAM TO
11 MR. CULLMAN, AND THAT'S NOT, AS YOU SAID, NO. 23.

12 MR. PIUZE: YOUR HONOR, IF I COULD, WHY DON'T WE TAKE
13 CARE OF THE ONE YOU MENTIONED RIGHT NOW, WHILE IT'S ON THE
14 PLATE. MAY I ASK MR. GOLDSTEIN TO HELP US OUT HERE?

15 THE COURT: SURE.

16 MR. PIUZE: YOUR HONOR, CAN YOU TELL ME THE DATE OF
17 THAT CULLMAN/WAKEHAM MEMO?

18 THE COURT: 12-8-70. PREVIOUSLY YOUR NO. 91.

19 CAN I MOVE ON TO SOMETHING ELSE?

20 WE CAN COME BACK TO IT.

21 MR. PIUZE: YES.

22 THE COURT: NO. 14, I YOU HAVE PREVIOUSLY NUMBERED AT
23 130.1. MEMO FROM OSDENE AND DUNN, DATED NOVEMBER 3RD, '77.

24 MR. PIUZE: I'M MOVING IT INTO EVIDENCE.

25 THE COURT: MS. WILKINSON, ANY OBJECTION?

26 ANY OBJECTION?

27 MS. WILKINSON: YES. BUT ONLY THE ONES PREVIOUSLY
28 STATED ON THE RECORD.

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6070

1 THE COURT: ALL RIGHT. NO. 14 IS RECEIVED INTO
2 EVIDENCE. THE PRIOR OBJECTIONS ARE STILL OVERRULED.

3
4 (EVID. - 14)

5
6 THE COURT: NO. 15. PREVIOUSLY MARKED AS 397 BY YOU
7 FOLKS. THE SMOKING AND HEALTH CONTINUING CONTROVERSY, AND
8 THEN I HAVE DOWN THERE, 1964 THROUGH '79.

9 MR. WILKINSON: SAME OBJECTIONS.

10 THE COURT: ARE YOU ASKING THIS COME IN?

11 MR. PIUZE: YES.

12 THE COURT: YOUR NOTED -- OBJECTIONS ARE NOTED,
13 RESPECTFULLY OVERRULED. 15 RECEIVED INTO EVIDENCE.

14
15 (EVID. - 15)

16
17 THE COURT: 16, ROPER PROPOSAL. THAT'S NO. 16,
18 PREVIOUSLY MARKED AS 330. IS THAT THE WHOLE PROPOSAL?

19 I DON'T KNOW HOW LONG IT IS.

20 MS. WILKINSON: IT IS, YOUR HONOR.

21 THE COURT: I DON'T THINK THERE'S BEEN ENOUGH
22 FOUNDATION FOR THAT ONE AT THIS TIME, SO I'LL GET BACK TO
23 THAT.

24 THE COURT: NO. 17, I HAVE PREVIOUSLY MARKED AS 33
25 BY YOU FOLKS, MEMO TO CULLMAN FROM WAKEHAM DATED
26 MARCH 24TH, '61.

27 MS. WILKINSON: CAN I ASK MR. PIUZE A QUESTION?

28 THE COURT: SURE.

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1 MS. WILKINSON: MR. PIUZE, YOU'RE JUST INTRODUCING
2 THIS ONE BLOWUP OF IT OR THIS ENTIRE DOCUMENT?

3 MR. PIUZE: IT'S A GOOD QUESTION. I'VE GOT A BIG ONE
4 AND THE SMALL ONE. DOES THE COURT ALLOW BOTH?

5 DO I HAVE TO CHOOSE FROM ONE?

6 THE COURT: WE CAN MARK ONE AS EXHIBIT B, BUT I DON'T
7 THINK WE'RE GOING TO BE GIVEN EVERYTHING. IT'S EASIER FOR US
8 TO HOLD ON TO THE SMALL ONES, BUT I DON'T HAVE A PROBLEM WITH
9 THE BIG ONE GOING INTO EVIDENCE -- I MEAN -- BEFORE THE JURY
10 IN THE JURY ROOM, IS WHAT I'M TRYING TO SAY. SO EVERYBODY
11 CAN LOOK AT THE SAME THING AT THE SAME TIME.

12 MR. PIUZE: NOW, ARE -- THE SMALL ONE WOULD
13 BECOME -- WHAT NUMBER WAS THAT, YOUR HONOR?

14 THE COURT: 15-A, AND THE BLOWUP IS -B. HOW ABOUT
15 THAT?

16 MR. PIUZE: THANK YOU VERY MUCH.

17 MS. WILKINSON: SAME OBJECTIONS.

18 THE COURT: THEY ARE NOTED AND RESPECTFULLY
19 OVERRULED. 17 RECEIVED INTO EVIDENCE.

20
21 (EVID. - 17)

22
23 THE COURT: 18, PREVIOUSLY MARKED BY YOU FOLKS AS
24 1500. IT'S A SPECIAL REPORT, 248 ON THE MARKET POTENTIAL OF
25 HEALTH AND CIGARETTES. I THINK I'VE READ MY WRITING
26 CORRECTLY.

27 DOES THAT ONE RING A BELL TO YOU FOLKS?

28 MR. PIUZE: OF A HEALTH CIGARETTE, YOUR HONOR?

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1 THE COURT: YES. ANYBODY ASKING FOR THAT?

2 MR. PIUZE: YEAH.

3 MS. WILKINSON: ARE YOU ASKING FOR THE ENTIRE REPORT
4 OR JUST THE PAGE THAT YOU SHOWED, PAGES?

5 I DON'T RECALL WHAT WAS SHOWED EXACTLY.

6 THE COURT: THEY HAVE NOT SEEN THE WHOLE REPORT, AS
7 FAR AS I KNOW.

8 MS. WILKINSON: I UNDERSTAND THAT.
9 THE COURT: I'M GOING TO RESERVE RULING ON THAT. IF
10 THE WHOLE THING COMES IN, THERE'S A FOUNDATION FOR THE WHOLE
11 THING. WE'LL DEAL WITH IT AT THAT POINT.
12 NO. 19, TESTIMONY FROM THE SCOTT TRIAL, PAGE
13 1178. THAT WAS BY A DEFENDANT.
14 ANYBODY ASKING THAT TO COME IN?
15 MS. WILKINSON: NO. THAT WAS JUST FOR IMPEACHMENT,
16 YOUR HONOR.
17 THE COURT: OKAY. 19 IS NOT IN. IS NOT IN EVIDENCE.
18 20, FELISE TRIAL PAGE 854. THAT'S THE SAME
19 THING, IT WAS FOR IMPEACHMENT?
20 MS. WILKINSON: YES, YOUR HONOR.
21 THE COURT: 20 IS NOT COMING IN.
22 21, SURGEON GENERAL REPORT, PAGE 9.
23 MS. WILKINSON: THAT'S THE 1964 REPORT, YOUR HONOR.
24 WE WOULD MOVE THAT ENTIRE THING, AND I BELIEVE I LAID THE
25 FOUNDATION WITH DR. BURNS FOR THE ENTIRE REPORT, AND I
26 DON'T --
27 THE COURT: ANY OBJECTION?
28 MR. PIUZE: NO OBJECTION TO THE ENTIRE REPORT COMING
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6073
1 IN.
2 THE COURT: THE 1964 REPORT, THE ENTIRE REPORT, WILL
3 COME IN. THAT IS 21.
4
5 (EVID. - 21)
6
7 THE COURT: 22, THAT'S A DEFENDANTS' THING. THIS IS
8 A BLOWUP DATED JANUARY 11, '64. IT'S A SURGEON GENERAL
9 REPORT.
10 DO YOU WANT --
11 MS. WILKINSON: YES. THAT SHOULD BE AN "A" FOR THE
12 NUMBER YOU JUST GAVE US, YOUR HONOR.
13 THE COURT: OKAY.
14 MS. WILKINSON: MR. PIUZE'S NUMBERING SYSTEM. IF YOU
15 CAN TELL ME THE NUMBER AGAIN. 21-A?
16 THE COURT: THIS IS 22. YOU HAD ALREADY MARKED THAT
17 SEPARATELY FROM THE SURGEON GENERAL REPORT.
18 MS. WILKINSON: OKAY. THAT'S FINE. WE'LL STICK WITH
19 THAT NUMBER THERE.
20 THE COURT: BLOWUP IS IN EVIDENCE. THAT'S 22.
21
22 (EVID. - 22)
23
24 THE COURT: 23, PREVIOUSLY MARKED BY YOU FOLKS AS
25 00035, REPORT ON TOBACCO AND HEALTH. THAT'S IN. YOU FOLKS
26 HAVE ALREADY DEALT WITH THAT.
27 24, THIS IS DEFENDANTS' PEOPLE MAGAZINE PAGE,
28 THE ADVERTISEMENT FOR WINSTONS, JUNE 23RD. I DO HAVE A
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6074
1 PROBLEM WITH THAT COMING IN. AS LONG AS IT'S THE ONLY PAGE
2 WE'RE DEALING WITH.
3 MR. PIUZE.
4 MS. WILKINSON: YOUR HONOR, CAN I ASK ONE THING?
5 ALL I WAS GOING TO DO IS ATTACH THE PEOPLE
6 COVER AND THE AD SO THE JURY KNOWS WHERE IT CAME FROM.
7 THE COURT: ANY OBJECTION, MR. PIUZE?
8 MS. WILKINSON: IT'S JUST A BLACK AND WHITE COPY,
9 ALTHOUGH WE WOULD LIKE TO GET THE REAL COLOR COPY IN.
10 MR. PIUZE: NO.

11 THE COURT: THE PHOTOCOPY OF THE FRONT PAGE AND THE
12 ADVERTISEMENT FOR THE JUNE 23RD, 2003 IS COMING IN. WE'RE
13 DEALING WITH THE PHOTOCOPY HERE, NOT THE ORIGINAL.

14
15 (EVID. - 24)

16
17 THE COURT: OKAY. NEXT I HAVE IS 25. PHOTO OF
18 CAMBRIDGE CIGARETTE PACKAGE. I DON'T HAVE A PROBLEM WITH
19 THAT.

20 MR. PIUZE.

21 MR. PIUZE: NO. NOR DO I.

22 THE COURT: 25 IS IN EVIDENCE.

23
24 (EVID. - 25)

25
26 THE COURT: 26. THE 1966 PUBLIC SERVICE ANNOUNCEMENT
27 BLOWUP. THIS IS INTRODUCED BY DEFENDANTS.

28 ANYBODY HAVE A PROBLEM WITH THAT?
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6075

1 MR. PIUZE: NO.

2 MS. WILKINSON: AND I WILL PUT THE SMALL COPY IN THE
3 COURT FILE.

4 THE COURT: 26 IS IN EVIDENCE.

5
6 (EVID. - 26)

7
8 THE COURT: 27, THE 1969 WARNING ON CIGARETTE
9 PACKAGES. INTRODUCED BY DEFENDANT.

10 ANY OBJECTION, MR. PIUZE?

11 MR. PIUZE: YEAH. IT'S CURRENTLY NOT ACCURATE.

12 MS. WILKINSON: I JUST POINTED OUT TO MR. PIUZE, THE
13 CAUTION SHOULD GO TO THE SIDE HERE. SO WE'LL FIX IT AND,
14 SUBJECT TO THAT, I DON'T THINK THERE'S ANY OBJECTION.

15 THE COURT: I'LL COME BACK TO IT WHEN IT'S CORRECTED.

16 NO. 28, 1985 PRESENT WARNING ON CIGARETTES.

17 ANY OBJECTION TO THAT, MR. PIUZE?

18 THAT'S THE SEVERAL -- THE ROTATING WARNINGS.

19 MR. PIUZE: NO.

20 THE COURT: 28 IS IN EVIDENCE.

21
22 (EVID. - 28)

23
24 THE COURT: 29, PHOTO OF DR. OCHNER. THAT'S NOT
25 COMING IN. THAT'S NOT YET BEEN IDENTIFIED.

26 30, THAT WAS PREVIOUSLY MARKED AS 12020. IT'S
27 A BLOWUP OF THE DEVELOPMENT OF KNOWLEDGE ABOUT SMOKING.
28 THAT'S A DEFENDANTS'.
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6076

1 ANY OBJECTION, MR. PIUZE?

2 MS. WILKINSON: NO. THAT'S A PLAINTIFF'S EXHIBIT.
3 THAT'S DR. DOLL'S COLOR CHART.

4 THE COURT: OKAY.

5 ANY OBJECTION, MS. WILKINSON?

6 MS. WILKINSON: YES. COULD I LET MS. MATTHEWS DO
7 THAT, SINCE IT WAS HER WITNESS?

8 THE COURT: MS. MATHEWS, ANY OBJECTION?

9 MS. MATTHEWS: YOUR HONOR, I JUST HAD A QUICK
10 QUESTION ON ONE SMALL PART OF THE CHART. LET ME, IF I COULD,
11 TURN IT AROUND FOR YOU.

12 I WAS JUST WONDERING IF MR. PIUZE COULD POINT
13 OUT ON THE RECORD WHERE THESE TWO BOXES WERE ADDED.

14 MR. PIUZE: WHAT TWO?
15 MS. MATTHEWS: THE U.S. PUBLIC HEALTH SERVICE AND THE
16 SWEDISH MEDICAL RESEARCH COUNCIL. I WAS AWARE OF THIS
17 OVERLAY PORTION.
18 MR. PIUZE: I CAN -- I'M NOT GOING TO POINT TO THE
19 RECORD, BUT I CAN TELL YOU THE SWEDISH WAS MENTIONED IN THE
20 RECORD, FOR SURE.
21 THE COURT: DR. DOLL MENTIONED IT.
22 MR. PIUZE: I DIDN'T ASK ABOUT THE U.S. PUBLIC HEALTH
23 SERVICE THROUGH DR. DOLL, BUT WE HAVE OTHER EVIDENCE OF THAT
24 THAT'S BERNISE 1959 GEM ARM ON BEHALF OF THE U.S. PUBLIC
25 HEALTH SERVICE SAYING SMOKING CAUSES LUNG CANCER. SO THAT'S
26 THE FOUNDATION.
27 MS. MATTHEWS: YOUR HONOR, I'D ONLY OBJECT TO THE
28 PUBLIC HEALTH SERVICE POINTS. THAT WAS THE SUBJECT OF SOME
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1 CONTENTION AS TO WHETHER SURGEON GENERAL BURNEY WAS SPEAKING
2 IN HIS INDIVIDUAL CAPACITY OR SPEAKING ON BEHALF OF THE U.S.
3 PUBLIC HEALTH SERVICE AND WHETHER THERE WAS ANY SPECIFIC
4 COMMITTEE OR STATEMENT BY THE U.S. PUBLIC HEALTH SERVICE.

5 THE COURT: WELL, IT IS A MATTER OF CONTENTION
6 BECAUSE DR. BURNS SAID HE -- IT HAD BEEN REVIEWED BY -- HE
7 THOUGHT IT HAD BEEN REVIEWED BY THE PEOPLE IN THE -- UNDER
8 HIM IN THE SURGEON GENERAL'S OFFICE OR BY THE PUBLIC HEALTH
9 CREW THAT WORKS WITH HIM.

10 MR. PIUZE: I THINK WHAT HE SAID WAS THAT IT WAS A
11 PUBLICATION ON BEHALF OF THE U.S. PUBLIC HEALTH SERVICE.

12 MS. MATTHEWS: I WOULD ONLY ADD, YOUR HONOR, THE
13 DEMONSTRATIVE THAT WAS PRESENTED TO DR. DOLL, HE WAS ASKED
14 ABOUT EACH OF THE EVENTS ON THIS DEMONSTRATIVE, AND IT'S ONLY
15 THAT ONE THAT WE REALLY ARE TAKING ISSUE WITH, WHETHER --

16 THE COURT: WELL, YOUR TAKING ISSUE IS NOTED. IT'S
17 RESPECTFULLY OVERRULED. 30 IS IN EVIDENCE.

18
19 (EVID. - 30)

20
21 THE COURT: 31, DR. HAMMAR'S PATHOLOGY REPORT.
22 ANYBODY OBJECT TO THAT?

23 MS. WILKINSON: NO. I'M MOVING IT IN.
24 MR. PIUZE: NO? >

25 MS. WILKINSON: I DON'T THINK IT IS COMPLETE.
26 THE COURT: HAMMAR'S REPORT, NO. 31, IS RECEIVED INTO

27 EVIDENCE.
28

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6078

1 (EVID. - 31)

2
3 THE COURT: 32, DANIEL FREEMAN HOSPITAL PATHOLOGY
4 REPORT DATED -- WELL, ACTUALLY, LET'S JUST DEAL WITH THE
5 REPORTS GENERALLY FROM DANIEL FREEMAN. THAT'S 32 THROUGH 37.
6 THEY WERE INITIALLY INTRODUCED BY PLAINTIFF.

7 I ASSUME, PLAINTIFF, YOU WANT THEM IN?

8 MR. PIUZE: YES.

9 THE COURT: ANY OBJECTION, MS. WILKINSON?

10 MR. GARDNER. I'M SORRY.

11 MR. GARDNER: THAT'S OKAY. MS. MATTHEWS,
12 MS. WILKINSON, I'LL ANSWER TO ANYTHING.

13 NO, YOUR HONOR, NO OBJECTION.

14 THE COURT: ALL RIGHT. 32 THROUGH 37 ARE RECEIVED
15 INTO EVIDENCE.
16

17 (EVID. - 32 THROUGH 37)
18
19 THE COURT: 38 AND 39 ARE THE TWO USC REPORTS.
20 I ASSUME YOU WANT THEM IN, MR. PIUZE?
21 MR. PIUZE: I DO.
22 THE COURT: MR. GARDNER, ANY OBJECTION?
23 MR. GARDNER: NO OBJECTION, YOUR HONOR.
24 THE COURT: 38 AND 39 ARE RECEIVED INTO EVIDENCE.
25
26 (EVID. - 38 AND 39)
27
28 THE COURT: IS THERE ANYTHING ELSE WE NEEDED TO DO
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6079
1 NOW?
2 MS. WILKINSON: YES, YOUR HONOR, BUT WE DON'T HAVE TO
3 DO IT RIGHT NOW. WE NEED TO MOVE IN THE DR. DOLL EXHIBITS,
4 AND WE DIDN'T MARK THEM, AS YOU KNOW, BECAUSE THEY WERE IN
5 THE MIDDLE OF THE DEPOSITION. SO WE CAN DO THAT TOMORROW
6 MORNING.
7 THE COURT: THEY START AT NO. 40.
8 MS. WILKINSON: OR WE CAN DO IT NOW.
9 THE COURT: YOU FOLKS -- HOW MANY ARE THEY?
10 MS. WILKINSON: WE WILL TRY TO WORK IT OUT WITH
11 MR. PIUZE AND THEN BRING IT TO YOUR ATTENTION.
12 THE COURT: START WITH THE NO. 40 AND TELL ME WHAT
13 YOU WANT TO DO WITH THEM.
14 ANYTHING ELSE BEFORE I POLITELY THROW YOU OUT
15 OF HERE?
16 MS. WILKINSON: THE WITNESS LIST FOR NEXT WEEK.
17 THE COURT: AWE. MR. PIUZE. THAT'S RIGHT. WHO'S
18 COMING IN?
19 WHO'S GOING TO VISIT US?
20 MS. WILKINSON: IN THE ORDER YOU HOPE TO CALL THEM.
21 MR. PIUZE: THE FIRST TWO ARE CUMMINGS AND POLLAY,
22 AND I HAVEN'T GONE BEYOND THAT. AFTER CUMMINGS AND POLLAY,
23 WE'RE STARTING TALKING ABOUT DOCTORS, MR. RELLER'S
24 DEPOSITION. IN OTHER WORDS, WE'RE GETTING DOWN IT.
25 THE COURT: OKAY. CUMMINGS AND POLLAY, PLAN ON THEM.
26 AND THEN YOU SAID DOCTORS AFTER THAT?
27 MR. PIUZE: YEAH.
28 MR. GARDNER: TREATERS?
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6080
1 MR. PIUZE: TREATING DOCTORS.
2 THE COURT: TREATING DOCTORS. OKAY.
3 WHEN YOU HAVE PINNED THAT DOWN A LITTLE BIT
4 MORE, WE'D APPRECIATE IT SO THAT EVERYBODY KNOWS.
5 ANYTHING ELSE FROM ANYBODY?
6 MR. PIUZE: OH, SURE. I CERTAINLY LIKE THE COURT'S
7 PINNING DOWN SOME TREATING DOCTORS.
8 THE COURT: I'M MARRIED TO ONE. NOT ONE OF THE ONES
9 HERE, BUT A TREATING DOCTOR, THEY'RE HARD TO PIN DOWN. I
10 ADMIT THAT.
11 MR. PIUZE: I CAN'T CONCEIVABLY COMMENT ON YOU
12 PINNING THAT DOWN, THAT PARTICULAR DOCTOR.
13 THE COURT: I DIDN'T MEAN IT IN A BAD WAY.
14 MR. PIUZE, ANYTHING ELSE?
15 MR. PIUZE: NO.
16 THE COURT: MS. WILKINSON?
17 MS. WILKINSON: NOTHING ELSE ON BEHALF OF
18 PHILIP MORRIS, SO YOU DON'T HAVE TO ASK THE OTHER ONES.
19 THE COURT: OKAY.

20
21
22
23
24
25
26
27
28

(AT 3:03 P.M., AN ADJOURNMENT WAS TAKEN
UNTIL WEDNESDAY, JUNE 18, 2003 AT 8:30 A.M.)

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